

OCT 21 1975

MICHAEL RODAN, JR., CLERK

IN THE
Supreme Court of the United States

OCTOBER TERM, 1975

No. **75-599**

APPALACHIAN POWER COMPANY,

Appellant,

v.

THE PUBLIC SERVICE COMMISSION OF WEST VIRGINIA,

Appellee.

ON APPEAL FROM THE SUPREME COURT
OF APPEALS OF THE STATE OF WEST VIRGINIA

APPENDIX TO JURISDICTIONAL STATEMENT

A. JOSEPH DOWD, *General Counsel* and
JOHN R. BURTON, *Associate General
Counsel*

American Electric Power Service
Corporation
2 Broadway
New York, New York 10004

CARL D. HOBELMAN, SAMUEL M.
SUGDEN and JOHN B. CHASE

LEBOEUF, LAMB, LEIBY & MACRAE
140 Broadway
New York, New York 10005

CHARLES R. MCELWEE
JAMES, WISE, ROBINSON &
MAGNUSON
316 Charleston National Plaza
Post Office Box 951
Charleston, West Virginia 25323

Attorneys for Appellant,

Appalachian Power Company

TABLE OF CONTENTS

	PAGE
THE PUBLIC SERVICE COMMISSION OF WEST VIRGINIA	
Order dated September 16, 1974	1
Order dated October 18, 1974	3
Order dated January 31, 1975	5
Order dated February 14, 1975	55
Order dated March 21, 1975	62
SUPREME COURT OF APPEALS OF WEST VIRGINIA	
Order dated June 23, 1975	72
Order dated July 29, 1975	74
NOTICES OF APPEAL	
Notices of Appeal to the Supreme Court of the United States filed with the Supreme Court of Appeals of West Virginia:	
June 30, 1975	75
October 14, 1975	78
Notices of Appeal to the Supreme Court of the United States filed with the Public Service Com- mission of West Virginia:	
July 2, 1975	81
October 14, 1975	85

TABLE OF CONTENTS (Continued)

	PAGE
WEST VIRGINIA CODE	
Chapter 24, Article 1, Section 7	89
Chapter 24, Article 2, Section 3	90
Chapter 24, Article 2, Section 4	91
Chapter 24, Article 5, Section 1	94
RULES	
Rules of Practice and Procedure, Public Service Commission of West Virginia, Rule 19	95
Rules of Practice in the Supreme Court of Appeals of West Virginia, Rule XIII	97

PUBLIC SERVICE COMMISSION OF WEST VIRGINIA CHARLESTON

At a session of the PUBLIC SERVICE COMMISSION OF WEST VIRGINIA, at the Capitol in the City of Charleston on the 16th day of September 1974.

CASE NO. 7083

APPALACHIAN POWER COMPANY,
a corporation.

In the matter of
increased rates and charges.

WHEREAS, on February 22, 1971, Appalachian Power Company, a corporation (hereinafter "Applicant"), filed its application for an increase in revenue from the sale of electricity in West Virginia, which application included a revision in Applicant's Fuel Adjustment Clause; and

WHEREAS, on or about July 29, 1971, the proposed rates, together with the revised Fuel Adjustment Clause, became effective under bond pursuant to statute; and

WHEREAS, it has come to the attention of the Commission that Applicant is collecting more revenues by reason of operation of the Fuel Adjustment Clause than the actual increased cost of fuel over 28.5 cents per MBTU because of its practice of "repricing" coal purchased from affiliated interests to the average price Applicant pays for coal purchased from non-affiliated interests, which practice may, pending further investigation and review, require the refunding of such overcharges by Applicant;

IT IS, THEREFORE, ORDERED that, effective immediately, Applicant cease and desist its practice of "repricing" coal purchased from affiliated interests for inclusion in the Fuel Adjustment Clause, and further that

Applicant either include the costs of coal at actual cost or the average price Applicant paid for coal purchased from non-affiliated interests, whichever is less, or exclude entirely the volumes and costs of coal purchased from affiliated interests from the operation of the Fuel Adjustment Clause, until further order of the Commission.

A copy.

Teste:

s/ FREEDA P. JONES
Acting Secretary

PUBLIC SERVICE COMMISSION
OF WEST VIRGINIA
CHARLESTON

At a session of the PUBLIC SERVICE COMMISSION OF WEST VIRGINIA, at the Capitol in the City of Charleston on the 18th day of October, 1974.

CASE NO. 7083

APPALACHIAN POWER COMPANY,
a corporation.

In the matter of
increased rates and charges.

Petition to suspend and reconsider order of September 16, 1974.

This proceeding came on to be heard this 18th day of October, 1974, upon the petition filed September 24, 1974, by Appalachian Power Company, a corporation, (hereinafter "Applicant") to suspend the order of September 16, 1974, herein and for reconsideration thereof; and upon the decision heretofore announced by the Commission.

Such order states that further investigation and review will be made of Applicant's practice of "repricing" coal purchased from affiliated interests to the average price Applicant pays for coal purchased from non-affiliated interests. Pending such investigation and review this practice was to be terminated on September 16, 1974.

The effective date for calculating the fuel adjustment clause under the guidelines set forth in said order is September 16, 1974, and all bills rendered after that date should reflect the fuel adjustment as required by that order. Since Appalachian's bills contain a fuel adjustment

clause based on the cost of coal burned during the second month preceding the month of billing, it will be necessary for the company to recalculate and refile with the Commission the average cost of coal and resulting fuel adjustment factor beginning with coal burned during the month of July, 1974, and to apply the factor so calculated based on July, 1974, to September bills rendered after September 16, 1974.

Upon reconsideration of which the Commission is of opinion and finds that pending further investigation and review the material matters contained in the order of September 16, 1974, were fully considered by the Commission prior to the announcement of such decision; that the evidence in this case supports said order and that the petition to suspend and reconsider the decision of September 16, 1974, should be denied.

IT IS, THEREFORE, ORDERED that such petition be, and it hereby is, denied.

A Copy.

Teste:

S. GROVER SMITH, JR.
Secretary

PUBLIC SERVICE COMMISSION
OF WEST VIRGINIA
CHARLESTON

At a session of the PUBLIC SERVICE COMMISSION OF WEST VIRGINIA, at the Capitol in the City of Charleston on the 31st day of January, 1975.

CASE NO. 7083

APPALACHIAN POWER COMPANY,
a corporation.

In the matter of
increased rates and charges.

PROCEDURE

On February 22, 1971, Appalachian Power Company, a corporation, filed its Tariff P.S.C. W.Va. No. 2, cancelling and superseding P.S.C. W.Va. No. 1, stating an increase of approximately ten and one-half percent (10-1/2%) in rates and charges for furnishing electric service in the entire territory served by it in West Virginia, to become effective on all service rendered on and after April 1, 1971. By order entered herein on March 3, 1971, Appalachian Power Company was made respondent to this proceeding and the revised tariff was suspended and the use of rates and charges set forth therein deferred until July 29, 1971, unless otherwise ordered by the Commission.

Having been advised by the respondent of its intention to place into effect at the end of the suspension period the increased rates and charges contained in the aforesaid tariff, the Commission by order entered on July 20, 1971, required the respondent to file with the Commission a bond in the amount of Nine Million Dollars (\$9,000,000) conditioned to secure the refunds to the persons or parties entitled thereto of the amount in

excess, plus interest at six percent (6%) per year, between the rates and charges placed into effect and those finally approved by the Commission. A proper bond was furnished and the increased rates and charges were accordingly placed into effect as of July 29, 1971.

By order entered herein on January 23, 1973, the matters involved in this proceeding were set for hearing to be held in the Commission's Hearing Room at the Capitol in the City of Charleston on April 9, 1973, beginning at 10 a.m., EST, and the respondent was required to give notice of the filing of its revised tariff and of the time and place of hearing thereon by publishing a copy of the order once a week for two (2) successive weeks, the first publication to be not more than thirty (30) days nor less than fifteen (15) days prior to April 9, 1973, in newspapers published daily in each of the Cities of Charleston, Beckley, Bluefield, Huntington, Logan, Point Pleasant, Welch, and Williamson. The respondent was further required to post a copy of the order giving notice of the filing of its revised tariff and the time and place of hearing thereon at each of its offices where bills for electric service were paid for a period of at least thirty (30) days prior to April 9, 1973.

Proper notice was given in all of the aforesaid cities and certification of the required postings was received. The hearing was held as scheduled on April 9, 1973. The respondent was represented by Charles C. Wise, Jr., attorney at law; the FMC Corporation, an intervenor, by F. T. Graff, Jr., attorney at law; Appalachian Research and Defense Fund and Mercer County Economic Opportunity Corporation, intervenors, by E. Dandridge McDonald, attorney at law; and the Logan Coal Operators Association, Island Creek Coal Company, and

Semet Solvay Division, intervenors, by F. Paul Chambers, attorney at law. The Commission staff was represented during all of the hearings by John E. Lee, General Counsel; Marian W. Louis, Assistant General Counsel; A. Byron Carver, Director, Division of Accounts, Finance and Rates; George R. Heath and Harold M. Howie, rate analysts; and W. J. Blake, engineer. In subsequent hearings held throughout this proceeding, T. D. Kauffelt, attorney at law, appeared for the FMC Corporation and for Allied Chemical Corporation, Mobay Chemical Company and Blaw-Knox Company, additional intervenors; and Charles Q. Gage, attorney at law, appeared for the Logan Coal Operators Association, Island Creek Coal Company, and Semet Solvay Division. Robert Rodecker, attorney at law, appeared for Appalachian Research and Defense Fund and the Mercer County Economic Opportunity Corporation. On November 30, 1973, E. Dandridge McDonald joined the legal staff of this Commission and participated in the preparation of the brief of the Commission staff as counsel.

Letters and petitions opposing the increases were received from cities and individuals. Further hearings were held on July 11, July 12, July 13, October 17, and December 10, 1973. At the close of the hearing held on December 10th, the case was submitted for decision, subject to the filing of briefs. The last brief was received on April 1, 1974.

EVIDENCE

The evidence in this case consists of a 775-page transcript of the proceedings, 42 exhibits received on behalf of the Company, 3 on behalf of the staff, and 5 on behalf of the residential intervenors.

Appalachian Power Company, a wholly-owned subsidiary of American Electric Power Company, Inc., a registered public utility holding company, is a large integrated electric power producer and distributor operating in 31 counties in Virginia and 21 counties in West Virginia. It is the principal supplier of electric energy in southern West Virginia and western Virginia, serving an area with a total population of approximately two million persons. At the time of the hearings, it was serving more than 260,000 residential, 31,000 commercial, and 900 industrial customers in West Virginia.

Accounting exhibits for the test year, which was the 1970 calendar year, were filed by the Company and the staff, and are summarized below:

APPLICANT'S EXHIBIT 21-R

Total Company Operations

	Per Books	Adjusted to Going Level
Operating Revenues		
Sales of Electricity	\$ 197,449,108	197,449,108
Other	1,764,423	1,764,423
Total Operating Revenues	\$ 199,213,531	199,213,531
Operating Revenue Reductions		
Operation & Maintenance	\$ 101,326,791	108,094,791
Depreciation & Amortization Expenses	23,122,687	25,245,687
Taxes—Other	17,592,704	18,555,704
Federal Income Tax (FIT)	4,320,213	1,064,213
Total Operating Revenue Deductions	\$ 146,362,395	152,960,395
Net Operating Income	\$ 52,851,136	46,253,136
Rate Base—Adjusted	\$	683,250,773
Rate of Return (on Rate Base Adjusted)		6.77%

Rate Base

	Per Books	Adjusted
Electric Plant and Construction Work in Progress (CWIP) in Service	\$ 841,510,742	916,653,737
Electric Plant—Future Use	832,280	4,811,640
Accumulated Provision for Depreciation & Amortization	(260,607,645)	(262,730,645)
Contribution in Aid of Construction	(1,881,791)	(1,881,791)
Working Capital	25,551,832	26,397,832
Total Rate Base	\$ 605,405,418	683,250,773

West Virginia Operations

	Per Books	Adjusted to Going Level	Pro Forma
Operating Revenues			
Sales of Electricity	\$ 90,558,437	90,558,437	100,040,437
Other	951,814	951,814	951,814
Total Operating Revenues	\$ 91,510,251	91,510,251	100,992,251
Operating Revenue Deductions			
Operation & Maintenance Expense	\$ 46,319,102	49,430,577	49,439,577
Depreciation & Amortization	10,731,045	11,679,162	11,679,162
Taxes Other than FIT	9,439,334	10,116,985	10,670,985
Federal Income Tax	1,806,649	459,650	4,847,650
Total Operating Revenue Deductions	\$ 68,346,130	71,686,374	76,637,374
Net Operating Income	\$ 23,164,121	19,823,877	24,354,877
Rate Base—Adjusted	\$	314,702,873	
Rate of Return (On Rate Base Adjusted)		6.30%	7.74%

Rate Base

	Per Books	Adjusted
Electric Plant & CWIP in Service	\$ 388,843,643	421,643,994
Electric Plant—Future Use	384,578	2,223,353
Accumulated Provision for Depreciation & Amortization	(119,277,202)	(120,225,319)
Contribution in Aid of Construction	(1,003,193)	(1,003,193)
Working Capital	11,675,103	12,064,038
Total Rate Base	\$ 280,622,929	314,702,873

Staff Exhibits 2 and 3

Total Company Operations

	Per Books	Going Level	Pro Forma
Operating Revenues			
Sales of Electricity	\$ 197,449,108	197,449,108	206,931,108
Other	1,764,423	1,764,423	1,764,423
Total Operating Revenues	\$ 199,213,531	199,213,531	208,695,531
Operating Revenue Deductions			
Operation & Maintenance Expenses	\$ 101,326,791	102,674,035	102,674,035
Depreciation & Amortization	23,122,687	23,122,687	23,122,687
Taxes—Other than FIT	17,592,704	18,060,047	18,523,489
FIT (less deferrals & credits)	4,320,213	3,264,418	6,937,323
Total Operating Revenue Deductions	\$ 146,362,395	147,121,187	151,257,534
Net Operating Income	\$ 52,851,136	52,092,344	57,437,997
Rate Base—Adjusted	\$	540,978,592	
Rate of Return (on Rate Base Adjusted)		9.63%	10.62%

Rate Base

	Per Books	Adjusted
Electric Plant in Service	\$ 799,746,248	799,746,248
Electric Plant—Future Use	821,118	821,118
Accumulated Provision for Depreciation & Amortization	(253,884,162)	(253,884,162)
Contribution in Aid of Construction	(1,760,856)	(1,760,856)
Construction Work in Progress—in Service	9,860,478	9,860,478
Working Capital		
Materials & Supplies	11,365,303	11,365,303
Prepayments	611,187	611,187
Cash (1/2 Operation & Maintenance—Pro Forma)	9,463,588	9,631,994
Earned Surplus Restricted for Future FIT	(35,412,718)	(35,412,718)
Total Rate Base	\$ 540,810,186	540,978,592

West Virginia Operations

	Going Level	Pro Forma
Operating Revenues		
Sales of Electricity	\$ 90,558,445	100,040,445
Other	951,814	951,814
Total Operating Revenues	\$ 91,510,259	100,992,259
Operating Revenue Deductions		
Operation & Maintenance Expenses	45,931,715	45,931,715
Depreciation & Amortization	10,550,043	10,550,043
Taxes—Other than FIT	9,741,596	10,205,038
FIT	3,293,146	6,966,051
Income Tax Deferred	(918,350)	(918,350)
ITC	(837,744)	(837,744)
Total Operating Revenue Deductions	\$ 67,760,406	71,896,753
Net Operating Income	\$ 23,749,853	29,095,506
Rate Base—Adjusted	\$ 245,801,063	
Rate of Return (on Rate Base Adjusted)	9.66%	11.84%

Rate Base

Electric Plant in Service & CWIP in Service	\$ 367,188,700
Electric Plant—Future Use	147,474
Accumulated Provision for Depreciation, Depreciation & Amortization	(113,936,066)
Contribution in Aid of Construction	(957,915)
Earned Surplus Restricted for Future Use	(16,363,466)
Working Capital	
Materials & Supplies	5,100,378
Prepayment	277,197
Cash	4,366,108
Stores Expense	(21,367)
West Virginia Rate Base	\$ 245,801,063

For purposes of outlining the issues to be determined in this proceeding with reference to the evidence, the following comparison from the data set forth above is recapitulated as follows:

	West Virginia Operation			
	Adjusted to Going Level		Pro Forma	
	Staff	Appalachian	Staff	Appalachian
Operating Revenues ..	\$ 91,510,259	91,510,251	100,992,259	100,992,251
Operating Deductions .	67,760,406	71,686,374	71,896,753	76,637,374
Net Operating Income \$	23,749,853	19,823,877	29,095,506	24,354,877
Rate Base—Adjusted .	\$245,801,063	314,702,873	245,801,063	314,702,873
Rate of Return (on Rate Base—Ad- justed)	9.66%	6.30%	11.84%	7.74%

This recapitulation reveals that both Appalachian and staff estimate the filed rates to produce an overall increase of \$9,482,000 in test-year revenues from Appalachian's West Virginia customers. However, the comparison also highlights the substantial dispute which exists between the utility and the Commission's staff as to allowable operating revenue deductions in the magnitude of \$4,740,621.

Moreover, the rate base claimed by Appalachian is \$68,901,810 more than the \$245,801,063 which the staff would allow.

Since the Commission is making various subsidiary findings on specific issues raised, the above recapitulation can only be used as a starting point for our consideration and a frame of reference.

Preliminary Comment

Before embarking upon the judgmental phase of this decision, certain unusual and extraordinary circumstances should be noted, as well as a statement of certain statutory guidelines and fundamental principles

which control this Commission in the ratemaking process.

This decision comes after a rate increase filing made effective tentatively nearly four years ago. Two of the three Commissioners who heard parts of the evidentiary record have since resigned from the Commission. At this time there is a vacancy of one Commissioner on the Commission. The present Chairman was appointed to the Commission on November 18, 1974. The two Commissioners that are deciding this case today have been subjected to various types of pressure, even to the point of being asked to disqualify themselves. After due consideration of this issue raised by the Commission on its own motion at the hearing held December 10, 1974, the Commissioners decided under the appropriate sections of the Code of Judicial Conduct that they were fully qualified to act as an administrative tribunal to decide this case.

This recital is not in criticism of anyone, either former Commissioners or counsel, but is made to accentuate the particular need for a decision in this case without further delay to preserve the public confidence in the Public Service Commission of West Virginia, as well as to provide the distributive justice required by the law and the record for all members of the public affected; that is, the people purchasing electricity, as well as those providing this public service and those who lend or invest their money to enable the enterprise to exist and grow.

Another unusual circumstance in this case is that the tariff sheets filed and under consideration in Case No. 7083 include the fuel adjustment clause of Appalachian Power Company. However, a hearing on *all* fuel adjustment clauses of electric utilities, including Appalachian,

was held in a separate proceeding, Case No. 7945. The hearing closed November 13, 1974, with the last brief having been filed December 19, 1974. The interrelationship of these two cases was emphasized when by order issued September 16, 1974, in Case No. 7083, Appalachian was required to cease and desist the practice of "repricing" coal purchased from affiliated interests for inclusion in charges under its fuel adjustment clause. The impetus for this order came from evidence presented in the hearing in Case No. 7945. Appalachian, by petition filed September 24, 1974, requested that this order of September 16, 1974, be suspended and for reconsideration thereof. By order of October 18, 1974, the aforesaid petition was denied. Since it is expected that the Commission's decision and order in Case No. 7945 will be issued soon, the decision and order in this proceeding, Case No. 7083, will be subject to subsequent action of the Commission in Case No. 7945 as it will relate to the fuel adjustment clauses of all electric utilities, including Appalachian Power Company.

Other unusual and extraordinary circumstances in this case, such as the necessity for anti-pollution facilities required by environmental law, the energy shortage and inflation will be commented upon in other parts of this decision.

Under the law, this Commission is obligated to set rates and charges of public utilities that are "just and reasonable" and so as "to prevent undue discrimination or favoritism." A controlling statute, Code of West Virginia, Chapter 24, Article 2, Section 3, provides that "in no case shall the rate, toll or charge be more than the service is reasonably worth, considering the cost thereof."

Thus, the ratemaking process—a quasi-legislative act performed in a quasi-judicial manner—seeks to set the lowest possible *reasonable* rates without *undue* discrimination in the exercise of its judgment in considering the utility's cost of providing service to the public. This is a concept of balance and fairness among all segments of the persons and groups of persons involved in a broad community. The Commission acts as a "consumer-oriented" regulatory body in a *positive* sense. That is, in seeing that the public is served at the lowest possible rates based on a consideration of cost, the Commission must regulate the utility in such a way that adequate revenues will be provided the utility so it will be able to pay all of its reasonable costs of doing business, including the costs of raising new money from the investing public for the installation of necessary facilities, as well as to pay dividends to its stockholders and to make principal and interest payments to its existing lending creditors. If this cannot be done, service to the consumer is jeopardized or actually adversely affected. Thus, although the Commission is "consumer-oriented," it is not anti-utility. It is merely anti-injustice, no matter from what source injustice comes, while striving for the ideal of distributive justice to all affected by its decisions.

The Issues

In addition to the usual basic and subsidiary rate-making issues involving a determination of the rate base, allowable rate of return, and going level and pro forma adjustments to operating expenses, there are other issues raised on the record. These include allocations of costs affecting rate base and cost of service as between Virginia and West Virginia, debt coverage requirements on Appalachian's outstanding debt, and a

position taken by intervenors, Appalachian Research and Defense Fund, Inc., and Mercer County Economic Opportunity Corporation (Appalred and EOC), purportedly on behalf of residential customers, whereby these intervenors argue to the effect that the rate block levels create an undue rate discrimination against those residential customers who do not purchase relatively large amounts of electricity.

Of all the briefs filed, the staff brief is the only one to attempt to come to grips with most, but not all, of these issues. The briefs on behalf of Appalachian Power Company did little more than argue that the utility should be allowed to get the full rate increase it asked for. The brief filed on behalf of FMC Corporation did little more than argue that Appalachian Power Company should get none of the increase it asked for, with a possible decrease for the future. Certain coal interest intervenors filed no brief. The brief of Appalred and EOC, who call themselves "Residential Intervenors," suggests a problem of rate design superimposed upon the problems of costs in determining allowable revenue increases. However, this brief provides no definitive suggestions of how to meet their challenge.

Thus, the Commission must necessarily start its discussion of this case and make its determination in an aura of conflict and extremes, a stale record, a multiplicity of issues and with little argument cited to the record on the myriad of detail which it must sift and resolve.

Test Year

The rate filing made by Appalachian was based on a test year of 1970. The rates became effective, subject to

refund, July 29, 1971. The case was heard in mid-1973 on this basis.

The purpose of the "test-year" technique in rate-making is to set a specific time frame for determining rate base, cost of service, and revenues. Judgmental adjustments are made to actual experience during the test year based on known and measurable changes occurring within the test year and a short time thereafter. The purpose of these adjustments is to reflect a cost-revenue relationship which will be typical of a company's operations beginning with the date the new rates become effective as approved. As a general rule, *no* adjustments to specific cost components of rate base or cost-of-service will be made which are not known and measurable at the time of the hearing. Likewise, *no* such adjustments will be allowed for known and measurable changes to specific cost components which occur too long after the end of the test year. This is particularly true in circumstances such as exist with Appalachian Power Company, where the utility is in a state of substantial growth. However, in cases where there has been a substantial regulatory lag, known and certain facts as they exist at the time of a rate decision may be used by the Commission in its overall judgment in deciding the rate to be approved, so long as such post-test year facts are of record or are of general knowledge. *Re: Hope Natural Gas Company* (1961), 40 PUR 3d 1. The Commission cannot set rates on the basis of adjusting a fragment of costs which occurred too long after the end of the test year without distorting the representativeness of the test period. This Commission has made adjustments for occurrences nine months after the end of the test period. *Re: Cabot Corporation* (1961), 41 PUR 3d 59. The rates here under consideration were made tentatively effective on July 29, 1971, almost seven months after the

end of the test period. The Commission is bound by the record made in this case on a 1970 test year in the application of these principles in the determination of rate base, rate of return, allocation and adjustments to cost-of-service for rates to be allowed and refunds to be ordered from and after July 29, 1971. In the event that this decision and order is unduly harsh to Appalachian Power Company because of events of late 1971 through 1974, so as to be contrary to the best interests of Appalachian's customers, the utility has available to it one of several alternate modes of relief available under our controlling statutes and regulations to spread the facts of the lag period upon the record.

Jurisdictional Allocations

Appalachian Power Company renders a variety of electrical services to various classes of customers in Virginia and West Virginia. As of December 31, 1970, it served 294,000 customers located in West Virginia, which is over 52% of its then total of 560,000 customers. It has substantial facilities in both States and in Tennessee. Its sales of electricity are at retail and wholesale, only a portion of which are subject to the rate jurisdiction of this Commission, while the remainder is subject to the rate jurisdiction of Virginia and the Federal Power Commission.

In this complex, allocations are necessary so that West Virginia ratepayers subject to our jurisdiction will only pay a fair, just and reasonable portion of the costs of the total integrated system of Appalachian Power Company.

Allocations of costs involve judgments in a myriad of facts. It has no claim to an exact science. Yet one of any number of valid cost allocation methods cannot be

arbitrary in the classification of costs, since such exerts a direct control over the amount of costs included in jurisdictional sales in West Virginia. This necessary tool in ratemaking can assign greater or lesser costs to West Virginia customers on two equally valid allocation methods used in this case. The issue was treated as relatively insignificant in the briefs of Appalachian and the staff. Appalachian represents that its allocation method should be used instead of the staff's method because of the availability of data to the Company and because the Company method has been accepted by this and other Commissions in the past. *Re: Virginia Electric and Power Company*, Case No. 7515, 61 ARPSCWV (1974). (Citations to "ARPSCWV" are to the published Annual Reports of this Commission.) Therefore, to confine the number of contested items, the Commission adopts the cost allocation method of the Company ("Twelve Month's Average Peak Coincident Demand"), noting that in the circumstances of this case a cost allocation method which is influenced by end-of-test year data is preferable of two acceptable methods of cost allocation.

Rate Base

Appalachian urges the Commission to adopt a "year-end" rate base rather than an "average" rate base, because of inflation, construction projects, and investments in pollution-control equipment. The Commission rejects this departure from its precedents of long standing and adopts its staff's approach on the basis of a 13-month average plant, plus certain specified adjustments, for several good and urgent reasons supported by the record. *Re: West Virginia Water Company*, Case No. 6742, 58 ARPSCWV 158 (1970), and Case No.

6878, 59 ARPSCWV 162 (1971). In addition, the Company advocates inclusion in the rate base of construction work in progress, future construction, investments in pollution-control equipment, and coal lands. The Commission will treat each of these matters individually.

Starting with the staff estimate of \$540,978,592 for Rate Base-Adjusted of the total Company, the Commission here exercises its judgment and discretion to make and to refuse to make certain adjustments to rate base on specific items.

(1) Blue Ridge Project

Appalachian seeks an allowance of \$12,272,073 in its rate base for expenditures made in connection with the proposed Blue Ridge pumped storage generating facility. The Federal Power Commission has only recently licensed this project, effective as of January 2, 1975. It will take several years even after construction begins before the project is completed. Approximately \$2,250,000 of this amount consists of land held by Franklin Realty Company and the balance of approximately \$10,030,000 has been lodged by the Company in its Construction Work in Progress account, including approximately \$2,425,000 in interest charged to construction. This plant is not under construction, and expenditures made in behalf of planning and litigation involving the project have been booked by the Company as Construction Work in Progress, including a substantial allowance in interest charged to construction. The Commission will allow no part of these costs in the rate base because the project is subject to considerable opposition and may never be permitted to be constructed. Thus, the expenditures made in the Blue Ridge

project may never be used and useful to the utility's customers, and in that posture, are part of the utility's risk of doing business to be absorbed in its allowable return over the years prior to its dedication to public service, if at all.

(2) Pollution Control Equipment

The utility also seeks approval of the Commission to include in its rate base the amount of \$43,894,747 for pollution control equipment. The Company had actually spent about \$16,500,000 of this amount booked in its Construction Work in Progress account at the end of the test year, with "commitments" made for the balance of the expenditure. These expenditures had been and are being made by Appalachian in compliance with State and Federal environmental requirements. Although "commitments" made for future expenditures are not allowable costs, we believe that allowance of that portion which had been expended by the utility before the end of the test year is a proper allowance. In the first place, pollution control equipment is non-revenue producing, but does cause substantial costs to be incurred. In the second place, Federal and State laws have required that the environment be cleaned up according to their standards for the public good. The fact that environmental requirements are costly cannot be brushed aside as if the costs do not exist. We will, therefore, make an allowance in the rate base for this purpose in the amount of \$16,500,000.

On December 30, 1974, the Attorney General of West Virginia wrote a letter to this Commission requesting it:

"...to investigate the propriety of the inclusion of the original cost of pollution control facilities and the attendant tax cost matter in the rate base submitted by a public utility when that same public utility is

receiving, at the same time, preferential tax treatment pursuant to the provisions of Article 6A" (of Code Chapter 11).

The Attorney General's letter further stated that he believed that any public utility in this State which is given preferential tax treatment as a result of the installation of pollution control facilities:

"...should not at the same time be permitted to use the full cost of those facilities and the cost of taxation of such facilities as a basis for rate increases which will ultimately be borne by the consuming public."

We will treat the Attorney General's letter as a request for clarification of the matters he raised. Two points are to be made: First, Code Chapter 11, Article 6A, Section 3, not only saves the utility the cost of ad valorem taxes on all but the salvage value of pollution control facilities in its cost-of-service, but also saves the consuming public the same savings. This is so because, if the utility had to pay higher ad valorem taxes on the pollution control facilities, the ratepayers would be obliged to pay for these higher taxes in the utility's cost of service. As it is, both utility and consumer are given a benefit. Second, in order for the utility to construct pollution control facilities, it must raise the money to do so from the investing public. It cannot count on the ad valorem taxes it did not have to pay. It is the governmental taxing authority which collects less tax revenue from the utilities on the pollution control facilities than would otherwise be collected. This is done because the public requires the benefits to the environment and the anti-pollution facilities are non-revenue producing to the utility while being cost-incurring to the utility.

As with *all* costs of a utility, the consuming public

pays them. However, the thrust of the Attorney General's tentative conclusion that a utility should not be permitted to seek a rate increase to recover the full cost of pollution control facilities is based upon an apparent misconception. If the utility gets money from investors to construct such facilities, it must pay the money back to the lenders with interest or pay dividends to its stockholders, or it will not be able to raise any more money from the investing public. Its rates must be high enough, not only to cover the operating and maintenance expenses of the anti-pollution facilities, but also to pay the costs of the capital invested. To prevent this would be confiscation of the investors' money and illegal. The investors as a class do not gain from the facilities which do not increase the utility's capacity to serve. It is the public as a whole that demands environmental controls. Thus, it is only just that the consuming public pay rates which will cover both the operating and capital costs of pollution control facilities.

(3) Coal Lands

Appalachian seeks a further adjustment to its rate base in requesting an allowance of \$15,737,151 for expenditures made in the purchase of coal lands and mining equipment. Prior to the end of the test year, \$4,801,668 had been expended for these items. The Commission staff used a thirteen-month average and added one-thirteenth of that amount, or \$369,359, which is already included in the threshold \$540,978,592 rate base, which is subject to adjustment by this order. Although the Commission favors and would encourage an electric utility to acquire its own coal reserves for part of its fuel requirements, as being in the public interest, in this proceeding we will not allow Appalachian an adjustment to its rate base of any more of its year-end expenditure of \$4.8 million than the average of \$369,359

allowed. *Cf. Re: Detroit Edison Company*, 93 Pub.Util.Fortnightly, page 93; *P.S.C. v. Duquesne Light Co.*, 17 Pa.Sup.Ct.187,90A2d 607, which are precedents from Michigan and Pennsylvania, respectively. We treat this issue differently than the anti-pollution facilities because on the transfer of coal lands to one of its coal producing affiliates it will become revenue-producing. Having its own sources of fuel permits a utility to have an assurance of a base supply of fuel in time of fuel shortage without which it cannot serve the public. Moreover, owning coal lands puts it in a better bargaining position vis-a-vis its non-affiliated suppliers of coal. This should have a downward influence on the price of coal purchased.

(4) Miscellaneous

The Commission rejects the Company's request to increase the rate base by \$276,352 which represents the utility's expenditures incurred by purchasing its transferred employees' houses, which the transferred employees cannot sell before they move to their new company location. This practice is a convenience to company personnel, rather than an essential element in the rendition of electric service to the public and is, therefore, not a proper item for inclusion in the rate base.

Also rejected is the Company's attempt to add to the rate base \$3,782,455 for land purchase contracts for surface lands and rights of way and \$196,905 for non-utility property not used or useful in its service to the public.

The adjustment for anti-pollution facilities allowed in an amount of \$16,500,000 requires a concomitant adjustment to accumulated provision for depreciation of \$511,500, making the negative figure of \$253,884,162

increased to \$254,395,662 as accrued depreciation to be deducted from the total electric plant allowed in the rate base. The Commission rejects the other adjustments to depreciation reserve urged by the Company, because such were based on year-end accumulations and a post-test year change in certain depreciation rates.

Also, the Commission adopts the staff's working capital requirements-adjusted of \$21,608,484 (combining materials and supplies, prepayments, allowable cash equal to one-eighth of operation and maintenance expenses-pro forma), subject to an additional adjustment because of the anti-pollution equipment allowance of \$82,500, so that the allowable working capital allowance will total \$21,690,984. The Commission adopts the staff calculations as to working capital because it properly excluded cost of purchased power and non-utility material and supplies and determined that merchandise on hand be deducted from materials and supplies on the basis of average test-year figures rather than year-end amounts.

(5) Accumulated Deferred Income Taxes

The foregoing adjustments to reflect the allowance of anti-pollution facilities costs are as follows:

Total Rate Base—Adjusted	\$540,978,592
Anti-Pollution Facilities:	
Plus —Plant	16,500,000
Less —Accumulated provision for depreciation	(511,500)
Plus —Working capital allowance	82,500
Tentative Adjusted Total	\$557,049,592

However, the original \$540,978,592 was derived after deducting \$35,412,718 which represents the test-year average of balances in the "Earned Surplus Restricted for Future Federal Income Taxes" account. This \$35,412,718 was generated from two sources of tax deferral:

(a) \$26,560,718 is the portion accumulated as a result of tax deferrals due to accelerated amortization on emergency facilities over a five-year period, under Section 168 of the Internal Revenue Code, with the tax deferrals being amortized by the Company over a longer period of time;

(b) the balance of \$8,852,000 is the portion accumulated prior to 1958, attributable to liberalized depreciation under Section 167 of the Internal Revenue Code, with the tax deferrals being built up and becoming tax savings as to growth companies such as Appalachian.

It is the decision of this Commission that the West Virginia portion of the \$8,852,000 tax savings, or \$4,090,314, attributable to liberalized depreciation associated with pre-1958 normalization of depreciation accruals be deducted from the rate base. However, the portion of the \$26,560,718 tax deferrals attributable to emergency facilities allocated to West Virginia, or \$12,273,132, is permitted to remain in the rate base, but assigning to it a zero rate of return, because the same is considered contributed to the utility by its rate-payers and has been invested in the business.

Thus, using the Company's apportionment of the resultant \$583,610,310 total Company rate base to West Virginia retail operations, the West Virginia rate base is found to be as follows:

Utility Plant in Service	\$381,118,985
Accrued Depreciation	(116,457,346)
Net Plant	\$264,661,639
Electric Plant Held for Future Use	378,977
Contributions in Aid of Construction	(938,430)
Working Capital	9,910,827
Deferred Federal Income Tax Savings	(4,090,314)
West Virginia Rate Base	<u>\$269,922,699</u>

Rate of Return

A rate base and rate of return are significant in rate-making only when an allowable rate of return is applied to the rate base determined in order to obtain a product which represents allowable earnings, subject to increase to recover income taxes associated with such return. The allowable earnings are needed to retire debt, pay interest and dividends, and otherwise to be used in the business for construction or working capital. Such allowable earnings should also be adequate to permit the utility to finance necessary expansion.

As stated before, the record of this case is confined to a 1970 test year with minimal adjustments for known and measurable changes occurring for a short period of time after the end of the test year.

The rate-of-return evidence in this case shows a Company weighted cost of capital of 8.93% compared with a staff range of rate of return of up to 8.03%. Although an allowable rate of return is a transient tool in ratemaking and unique to each particular company with its own capital structure and character of operations, it is useful to note that the highest rate of return heretofore allowed by this Commission was 8.76% on a utility capital structure as of December 31, 1972. *Re: C. & P. Telephone Company of West Virginia*, Case No. 7496, issued June 24, 1974. It is true that the starting point for determining a fair, just and reasonable rate of return to be applied to an allowable rate base is the cost of capital based on the evidence. However, cost of capital is just one of several elements to be considered in making a factual finding on rate of return. Some of the other factors to be considered, particularly in the instant case where the decision is being made approximately four years after the end of the test year, are as follows:

trends in debt and equity financing; growth of capacity and anti-pollution facilities; inflation and other elements of risk, such as Appalachian's Blue Ridge project, governmental action or inaction, and the effects on load growth because of energy use, conservation measures and possible changes in rate design to relieve the plight of the disadvantaged. The informed judgment of this Commission is based on the record and public records required to be filed with this Commission pursuant to law and its regulations.

The cost of capital evidence presented by the staff and Appalachian shows substantial agreement on the weighted cost of debt and preferred stock of from 4.68% to 4.73%. Also, it shows a major difference of opinion as to the cost of common equity capital, ranging from 11.00% (staff) to 14.20% (Appalachian). However, the weighted average cost of money will be discussed in this opinion only in terms of the percent of capitalization after applying a zero cost of capital to the portion of "Earned Surplus Restricted for Future Federal Income Taxes" resulting from tax deferrals due to amortization on emergency facilities under Section 168 of the Internal Revenue Code, which was not deducted from the rate base.

Using the capital structure as of December 31, 1972, presented by Appalachian in its Exhibit No. 30, and adjusting it to reflect our decision on Federal Income Tax deferrals, the percent of capitalization is adjusted to be as follows:

	Percent of Capitalization	Cost of Capital
	%	%
Debt	59.85	6.72
Preferred Stock	8.73	6.44
Deferred FIT	2.22	0
Common Equity	29.20	11.00 to 14.20
	100.00	

Applying the appropriate factors to the Company's cost of debt and preferred stock results in weighted cost of such capital of 4.02% plus 0.56%, or 4.58%. Deferred FIT is excluded entirely from the weighted cost of capital. Common equity is considered in a different perspective. The Commission considers the range of cost of common equity capital of from 11.00% to 14.20% without deciding any particular mathematical mix of the resultant weighted costs of common equity capital as binding on this Commission in reaching its conclusion on rate of return in this or any future case involving Appalachian Power Company. The evidence of past cost of common equity capital, by its very nature, does not lead to a precise finding of a prediction of today's cost of common equity capital to Appalachian Power Company. This evidence is acceptable proof, however, of a range of cost data to be considered with other elements in determining the allowable rate of return.

Thus, the Commission here finds on the basis of the record and its informed judgment that the allowable rate of return for Appalachian in determining its just and reasonable rates, to be effective on and after July 20, 1971, is 8.73%.

Applying this rate of return to a 1970 test year-adjusted rate base for West Virginia of \$269,922,699 produces an allowable return of \$23,564,252.

Adjustments to Operating Revenue Deductions

Both the utility and staff agreed that the per books total company operating revenue deductions were \$146,362,395. However, both would make certain adjustments to the per-book cost items to take care of known and measurable changes in such costs in order to reflect a representative matching of costs to projected

test-year revenues to set rates for the period beginning July 29, 1971.

As discussed above, the Commission's starting point indicates a substantial difference between the staff and the Company on a total Company basis as to allowable adjustments in the magnitude of over \$5,839,208. This is prior to allocation to West Virginia. The utility seeks a net aggregate upward adjustment of \$6,598,000, while the staff recommends an overall net adjustment of \$758,792. The Commission will discuss its allowance or disallowance of these operating revenue deduction adjustments by specific cost components, with the net effect of allowing a total adjustment of \$1,639,421 to the total Company cost of service. The West Virginia apportionment of such costs, on the basis of the Company's method of allocation amounts to \$69,267,529, including depreciation expense.

Each adjustment to specific cost components will be discussed below:

(1) Salary and Wage Adjustments

Appalachian presented evidence projecting going-level salary and wage adjustments of \$2,227,000. This included not only the annualization of wage increases effective during the test year, but also an estimate for anticipated increases to be granted after the test year. Furthermore, the utility's exhibit reflects going-level increases in labor related expenses, such as pensions and insurance, based on said estimated salary and wage increases.

The staff accounting exhibit, on the other hand, reflected going-level adjustments to salary and wage expenses and other labor related expenses only to the extent that such adjustments annualized increases were

actually experienced throughout the test year. The record indicates that while the out-of-test period wage increases projected by Appalachian were tentatively scheduled at the time its accounting exhibit was prepared, the wage increases were later prevented by the effect of Federal wage controls and were not actually experienced as estimated. Therefore, we will not allow these post-test year wage adjustments, but will accept the wage increase adjustments and associated benefits as were included in staff's Exhibit No. 2, which total \$1,535,636.

(2) Contract Labor for Maintenance

Appalachian's evidence projected a going-level increase to contract labor which included additional tower painting expense of \$69,300, tree trimming and brush control of \$739,000 and pole treatment of \$274,000. The record revealed that these adjustments are the result of Appalachian's estimation of what a "normal level" of expense should be for each of these expense items. However, the evidence shows that Appalachian imputed a so-called "normal level" which was considerably higher for these expenses than either the actual test-year expense or an average expense based on the years 1967 through 1970.

The staff increased the test-year tower painting expense by \$33,913, tree trimming and brush control by \$164,247 and pole treatment by \$169,461, which represented additional expense computed when using a four-year average of actual expenses as compared to the actual test-year expenses for these cost components. The averaging method is consistent with past decisions of this Commission in its treatment of expense items of this nature and, therefore, the Commission will allow the increases as were included in staff Exhibit No. 2, including an adjustment of \$79,408, to annualize contract

labor rates which were increased during the test year. The aggregate of the costs allowable in these contract labor cost items is \$447,029.

(3) Materials and Supplies

Appalachian projected an adjustment of \$92,000 to its book expenses of materials and supplies upon the basis of an estimate based on economic indicators rather than a normalization of increases in the test-year level of expenses. We will not allow this adjustment for the purpose of developing a cost of service in this proceeding, noting, however, that inflationary trends are taken care of in the circumstances of this proceeding by a higher level of the rate of return allowed by the Commission than would otherwise be the case in the absence of inflation.

(4) Public Affairs

Appalachian's adjustments would increase its public affairs expenses by \$122,000 and sales Department expenses by \$797,000. Again, these were estimates which were made on the assumption that the actual expenses for the test year in these classifications should be higher to be representative. The staff found no known or measurable changes after the end of the test period which would suggest any adjustment to these expenses. The record reflects that the level of sales expense actually decreased in 1972. A review of the utility's Annual Reports to the Commission shows that sales expenses 1971-1973 have continued to decrease. Therefore, we will not allow any adjustments to the test year costs for public affairs and sales department expenses.

(5) Operating Expenses Associated with Anti-Pollution Facilities

Appalachian's presented evidence seeking an adjustment of \$1,332,000 for estimated future expenses in operating air and water pollution equipment, composed of \$1,282,000, by applying a factor of four percent (4%) to Appalachian's estimate of total capital costs of air pollution equipment and an estimate of \$50,000 as cost for operation of water pollution equipment. While staff made no such adjustment in its evidence, the Commission makes an allowance for this expense to be consistent with our inclusion in the rate base of certain actual costs incurred by the Company for pollution control equipment. Therefore, we will allow an additional \$660,000 for anticipated operation and maintenance expenses associated with that equipment consistent with the evidence presented by the Company at 4% of our allowance of \$16,500,000 actually expended on pollution control facilities.

(6) Postage and West Virginia Gasoline Tax

Both Company and staff included in their respective accounting exhibits going-level adjustments for annualization of increases in postal rates and gasoline taxes during the test year. There is little difference between Company's and staff's adjustments. We allow staff's adjustment of \$102,687 for increased postage and \$3,645 for increased gasoline taxes.

(7) Rate Case Expense

In the matter of rate case expense, it has been the position of this Commission that such expense is properly chargeable to the rate-payers over a reasonable amortization period. Appalachian proposes to include the total estimated cost of its rate cases of \$200,000 in operating expenses. The Commission will follow its

established policy of not allowing rate case expense to be charged off in one year and will, therefore, allow an adjustment of \$66,667 derived from an amortization of rate case expense over three years.

(8) Service Corporation Billings

A contract between Appalachian Power Company and its affiliate, American Electric Power Service Corporation, exists whereby certain specialized services are rendered at cost to Appalachian. This contract has previously been approved by this Commission. The Company requested an upward adjustment of five percent (5%) of the actual cost. No adjustment for this expense item is allowed because a mere increase in revenues in the test year due to the filing for higher rates is not adequate proof that actual test-year expenses for this cost item are not representative of a normal cost level. The Company's going-level adjustment of \$173,000 to service corporation billings includes increases in service corporation charges subsequent to the end of the test year ended December 31, 1970. In keeping with decisions made with regard to similar items in this order, we will not allow this increase.

(9) Depreciation Expense

Since the Commission has rejected the Company approach for a year-end rate base with projected future plant, it is not necessary to discuss the Commission's rejection of the utility's consistent adjustment of depreciation expense. However, the utility made an additional adjustment to reflect a *lowering* of depreciation rates effective after the end of the test year, which would reduce depreciation expense by nearly \$400,000. The Commission will make no adjustment on the basis of

post-test year changes in depreciation rates. The Commission does, however, make an adjustment to depreciation expense by adding \$511,500 to reflect depreciation at a rate of 3.1% of the adjustment for the inclusion of the adjustment for actual cost of anti-pollution facilities allowed in the rate base.

(10) Adjustments to Base Fuel Costs

The Commission's staff reduced fuel costs by \$755,005 to eliminate interest charges on delayed coal bill payments. The Commission agrees that this amount is not properly chargeable to operating expenses and will, therefore, adopt the staff adjustment.

Further, the staff reduced fuel costs by \$61,778 to reflect an understatement of coal on hand at December 31, 1970, resulting in an overstatement of test-year fuel costs. The Commission adopts this adjustment by its staff as proper.

(11) Taxes other than Income Taxes

Appalachian made going-level adjustments to taxes other than Federal income tax in the amount of \$963,000 in its evidence. Staff Exhibit No. 2 also reflected numerous tax adjustments which totaled \$475,706. However, \$8,363 of this amount was an adjustment to Account 501-Fuel Expense, and is allowed in that account, but is not shown as an adjustment to taxes. With this correction, the Commission adopts the staff tax adjustments aggregating \$467,343 for the following reasons:

Appalachian improperly added back capitalized taxes during the test year in the amount of \$224,060, and an adjustment by staff to reduce property taxes by \$158,167 more than respondent's adjustment. In the matter of capitalized taxes, the Commission has consistently allowed the inclusion of capitalized taxes in

rate base whenever the applicable construction work is completed. Since the rate base includes a component of capitalized taxes, it would be improper to allow test-year capitalized taxes to be added back as an item of operating expense.

The problem of property tax assessments being based on property values at some date earlier than the end of a test year is not new to this Commission. In keeping with prior decisions, we have adopted here the actual property tax paid during the test year. In view of the fact that the staff adjustments relating to capitalized taxes and property taxes are in keeping with the above-stated principles, the Commission has here adopted the staff adjustments to taxes, other than FIT, totaling \$467,343, and the adjustment to Account 501 of \$8,363.

The aggregate of these going-level operating revenue deductions of \$2,986,087, together with other resultant components of the cost of service resulting from a pro forma adjustment to calculate allowable Federal income taxes, is allocated so as to apportion \$1,181,691 to West Virginia.

Debt Coverage

Appalachian Power Company and staff witnesses agree that the utility's debt service coverage is a very serious problem. The problem is one that affects the ability of the utility to raise new money to finance its expanding capacity-producing and anti-pollution facilities and operations. The solution of this problem is made more complex because of the staleness of the evidentiary record. The record will only permit a coverage test on the basis of a 1970 test year, and the Company has carried on its financing in 1971-1974 in the face of

contingent revenues being collected in West Virginia, subject to refund and a lack of rate relief having been achieved in Virginia.

Thus, to arrive at the reasonableness of the rates allowed in this decision by use of a debt coverage test, the Commission must, of necessity, turn to the Annual Reports for 1972 and 1973 filed by Appalachian with this Commission. Appendix A-1 to this decision and order reflects a comparison of debt coverage ratios, both with and without the effect of the full rate increase requested by Appalachian in this proceeding.

The comparison shows that if Appalachian were denied any rate relief at all in this proceeding, its year-end debt service coverage would have been inadequate in 1972 (1.93) and 1973 (1.99), because the number of times its interest on long-term debt is covered by its earnings would be less than 2.00 times. On the same comparison, the other extreme is shown in that its actual annual debt service coverage was adequate in 1972 and 1973 because its debt service coverage was 2.23 and 2.08. These coverages are calculated unaudited with revenues which exclude contingent revenues which are not allowed as a result of this order, and which must be refunded pro rata to the West Virginia customers of Appalachian. However, the debt service coverage calculations based upon the 1970 test year adjusted to the revenues allowed by this final order show coverage ranging from 2.00 to 2.49, depending upon the use of actual annual interest or year-end interest annualized. Thus, a finding can be made that the rates allowed by this order are the lowest possible reasonable rates allowable under that test. Moreover, since total company figures are used in a period of time when the utility had no request for rate relief pending in Virginia, it follows that

the 2.00 to 2.49 times test-year coverage would have been improved if Appalachian had been realizing additional revenues in Virginia. Since it did not seek rate relief in Virginia during this period, it must have been satisfied with a debt-coverage ratio which ranged above 2.00 times. Since Appalachian did raise new money in 1972 and 1973, it can be assumed that the debt-coverage test complied with SEC requirements and the Company's Debenture Agreement. The Commission finds that the revenues allowed by this Commission in this case are just and reasonable on the basis of the debt-service coverage test. There is no data available to the Commission upon which it can base a finding that the rates allowed by this order will not permit Appalachian to raise new money at the present time. The utility's current operations and rate base are too far beyond the end of the 1970 test year used in this proceeding to be useful to correct present deficiencies in revenues, if any, from its West Virginia customers. If Appalachian's present growing pains in an inflationary period of our country's economy are made more acute by the results of this decision and order, the Company has available to it adequate remedies under Chapter 24 of the West Virginia Code and the regulations of this Commission.

Rate Level Apportionments

Intervenors, Appalachian Research and Defense Fund, Inc., and Mercer County Economic Opportunity Corporation, filed a joint petition to intervene on behalf of "low-income" customers of the electric utility. In addition to matters considered and decided in other parts of this decision and order, these intervenors suggest that the existing rate structure of the utility is discriminatory, presumably against "low-income" customers.

The brief of intervenors points up the obvious fact that the rate steps of the utility's rate schedules are designed to promote the use of electrical energy by each customer under various classes of service. A glance at Appendix A-2 to this decision shows that the rates filed in this case have the highest rates in the first blocks with a descending series of rates in each of the succeeding blocks. As a result, the more electrical energy that is purchased, the lower will be the unit cost of such purchases because of the effect of averaging. However, the total revenues paid by each of these large users will be more than paid by each of the smaller users.

The intervenors suggest that this creates rate discrimination against smaller users. However, there is no proof of this in the record. The intervenors presented no evidence to show a fair apportionment of demand and energy costs or of fixed, variable or mixed costs to each block of the rate schedules. The Company spread its rate increases over the steps of the various rate schedules by giving greater increases in the first usage blocks in descending increments, even though the higher usage blocks took a greater percentage increase. (See Appendix A-2.) The Company's purpose was "to ask all customers to share equally in the increased revenue" sought in this case. This position of the Company is not contested by the parties on the basis of the record. The intervenors seem to argue that little or none of the rate increase should be placed in the first 600 KWH per month usage in order to benefit the low-usage customer.

The Commission can take administrative notice of the plight of the poor and the frustrations of the fixed income, low-usage customer. We sympathize with the economic pressures on these citizens in a time of inflation.

However, because of the inadequacies in the evidentiary record, due to a failure on the part of the intervenors to come forward with adequate proof to support their allegations of rate discrimination, the Commission—in this opinion—will do no more than outline the complexities of the problem and require the utility to furnish certain data for use on the earliest occasion in which rate design may be properly considered on an adequate evidentiary record.

Of all the tasks involved in the artful science or the scientific art of ratemaking, rate design is the most difficult and troublesome. As we have seen, the many steps taken in ratemaking thus far—determination of rate base, rate of return, adjustments to cost of service, and allocations to jurisdictions—are intricate and detailed, but they are determined with a reasonable degree of rationality and precision. However, in contrast, the job of spreading a revenue deficiency over several classes of ratepayers, or deciding *who* is going to pay what rate or rates, depends on a consideration of a far broader spectrum of circumstances to reach a balance and a fairness that can be recognized as distributive justice. Any rate increase at all will be unpopular. The question is—are the rate increases fair, just and reasonable, and not *unduly* discriminatory?

The broad scope of rate design subsidiary issues are set forth in a recent administrative decision of the California Public Utilities Commission. *Re: Southern California Edison Company* (1973), 100 PUR 3d 257, 297-305. To set a good rate structure, the rates should have the following attributes:

1. Rates should produce the revenues required for the utility to operate its business.

2. Rates should be simple and easy for the customers to understand.

3. Rates should promote stability in revenue flow over the annual operating period.

4. Rates should be based upon a fair apportionment of cost of service to jurisdiction, to classes of customers and both to use and availability to use.

5. Rates should discourage wasteful use.

6. Rates should not be so high in any category or class that it would force the blessings of electrical service to be economically out of reach of the poor or to lose the benefits of high usage which redound to the benefit of all, including the disadvantaged.

7. Rate changes should not be abrupt or arbitrary in departing from historical levels of rates because both utility and its classes of customers have geared themselves to the rates as they have been in effect, and to destroy this relationship without good cause would do violence to the maintenance of good faith between the utility and its customers.

Thus, in short, any change in rate design must be considered in its direct effects on the ratepayers who pay under a particular rate design and in its indirect effects upon the other ratepayers who must share any shift of revenues from a particular class of customers or level of usage within that class.

The most cogent example of the effects of an abrupt change in rate design has come about by the fuel adjustment clause which passes on to the electrical customers the higher costs of fossil fuel to the utility in the form of an incremental increase "made on the actual KWHrs billed." Without discussing the rate design features of

the energy surcharge in this opinion, it is obvious that the magnitude alone of this additive to substantially all of the bills of Appalachian's customers has created problems.

All of these many interrelated difficulties must be fully considered by this Commission on an evidentiary record. This opinion and order is but the first step in the reasoned solutions in the public interest.

SUMMARY

The specific items of cost and revenue considerations discussed and decided above are summarized in Appendix A-3 to this decision. In summary, we find that the test-year cost of service of Appalachian Power Company allocated to its West Virginia jurisdictional customers is \$92,831,781. A comparison of test-year revenues from West Virginia jurisdictional sales total \$91,510,259 at the going level, indicating a total deficiency in revenues of \$1,321,522. Therefore, we will order Appalachian Power Company to file lower rates in conformity with the foregoing decisional findings and conclusions set forth in this decision and order.

FINDINGS

1. The Commission finds that the rates and charges set forth in Appalachian Power Company's Tariff P.S.C. W.Va. No. 2 issued February 3, 1971, and put into effect July 29, 1971, by terms of West Virginia Code, Chapter 24, Article 2, Section 4, are unjust and unreasonable for the reason that they would produce more revenues than are necessary to enable Appalachian Power Company to pay its reasonable and necessary operating expenses, taxes, and depreciation, and earn a

fair return on its property used and useful in its public service business in the State.

2. The Commission makes no finding in this case on the issue of whether or not the "Fuel Clause" contained in the various rate schedules in said Tariff P.S.C. W.Va. No. 2, as amended by order issued in this proceeding on September 16, 1974, is unjust and unreasonable or unduly discriminatory, but defers its findings and orders with respect to said "Fuel Clause," as amended, to its forthcoming decision and order in its Case No. 7945, styled *Investigation of fuel adjustment clauses of electric utilities, proceeding upon the Commission's own motion*.

3. The Commission finds that intervenors, Appalachian Research and Defense Fund and Mercer County Economic Opportunity Corporations, did not sustain their burden of proof on the issue they raised asserting that the historic rate design of the various rate schedules filed by Appalachian Power Company were unduly discriminatory to the detriment of the utility's low-usage customers.

4. The Commission finds that the rate design of the various rate schedules filed by Appalachian Power Company adjusted to levels which would recover the cost of service allowed in this decision and order and which are designed to spread any basic rate increases equally over all classes of customers is just and reasonable and is not unduly discriminatory in setting rates to be effective and refunds to be made as of and after July 29, 1971, to the date of this order, but that such rate design is a proper issue to be raised and determined on a proper record at any evidentiary hearing that may be held subsequent to the date of this order affecting the rates of Appalachian Power Company for the period beginning with the date that any new base rates higher than those allowed

herein may be put into effect by proper order of this Commission.

5. The rates and charges hereinafter ordered to be prepared and filed in superseding rate schedules, to be effective from and after July 29, 1971, in accordance with the principles and conclusions set forth in this decision and order, are just and reasonable and are not unduly discriminatory.

ORDER

1. The tariff sheets filed with the Commission by the respondent, Tariff P.S.C. W.Va. No. 2, issued February 3, 1971, are hereby cancelled and stricken from the tariff files of the Commission.

2. Appalachian Power Company is ordered to file revised sheets for all of its P.S.C. W.Va. No. 2 tariff schedules, which will be effective on and after July 29, 1971, containing first revised sheets where appropriate which set forth reduced rates and charges under the rate design used in its filing on February 3, 1971, at levels which are only high enough to recover the 1970 test-year deficiency of \$1,321,522, over the revenue level of the 1970 test year. These revisions should be filed within ninety (90) days of the date of this order for approval by this Commission as to their conformity with the findings and conclusions stated herein.

3. Respondent shall refund to each of its customers within sixty (60) days of the date of this order the difference between the amount collected under said Tariff ordered to be cancelled and stricken hereby and the rates and charges herein ordered to be filed and approved by this Commission before being finally put into effect as of July 29, 1971, with interest at the rate of six percent

(6%) per annum from the time collected to the date of the refund, and shall promptly report such refunds to the Commission.

4. Respondent is ordered to file with this Commission, for informational purposes only, and in preparation for any subsequent hearing on the rate design of Appalachian Power Company's rate schedules, pro forma rate-levels in each of the steps in its various rate schedules which would spread the additional revenues allowed herein of \$1,321,522 over all of the steps of each rate schedule other than the first step, *except* for the following: C.P. (Capacity Power—Wholesale), L.P.O. (Large Power—Optional), L.C.P. (Large Capacity Power), I.R.P. (Interruptible Power), H.L.P. (High Load Factor Power), and T.P. (Transmission Power), in which excepted tariffs all steps would be increased.

A Copy.

Teste:

S. GROVER SMITH, JR.,
Secretary

APPENDIX A-1

APPALACHIAN POWER COMPANY

Comparative Statement of Interest Coverage Based on Adjusted Test Year in Case No. 7083 and Utility's Annual Reports to the West Virginia Public Service Commission.

	Year Ended 12-31-70 Adjusted	Years Ended	
		12-31-72	12-31-73
Times Interest Earned on Actual Annual Interest			
Test year at going-level adjusted for decision in Case No. 7083	2.49		
1972 and 1973:			
Including revenues collected under bond		2.55	2.38
Excluding revenues collected under bond		2.23	2.08
Times Interest Earned on Annualized Interest on Debt Outstanding at End of Year			
Test year at going-level adjusted for decision in Case No. 7083	2.00		
1972 and 1973:			
Including revenues collected under bond		2.21	2.27
Excluding revenues collected under bond		1.93	1.99

APPALACHIAN POWER COMPANY

(Total Company)

Comparative Statement of Interest Coverage Based on Adjusted Test Year in Case No. 7083 and Utility's Annual Reports to the West Virginia Public Service Commission.

	Year Ended 12-31-70 Adjusted	Years Ended	
		12-31-72	12-31-73
Operating Revenues	\$ 200,535,053	\$ 263,088,795	\$ 291,525,663
Operating Revenue Deductions:			
Operating Expenses	103,334,035	122,007,430	140,203,734
Depreciation	23,634,187	32,687,028	36,260,624
Taxes other than income tax ..	18,124,537	24,599,147	21,359,192
Total	145,092,759	179,293,605	197,823,550
Defined Earnings—Operating ...	55,442,294	83,795,190	93,702,113
Non-operating Income			
(up to 10% defined earnings—operating)	5,544,229	8,335,345	9,370,211
Defined Earnings	60,986,523	92,131,035	103,072,324
Interest on Long-Term Debt (actual annual interest)	24,453,753	36,159,927	43,397,694
Annualized Interest on Long-Term Debt Outstanding at End of Year	30,484,898	41,606,629	45,451,511
Effect of Eliminating Revenues Collected under Bond			
Defined earnings—operating ..		83,795,190	93,702,113
Less revenues collected under bond		(11,156,000)	(12,120,000)
Add B&O tax effect @ 4.88% ..		544,413	591,456
Adjusted defined earnings—operating		73,183,603	82,173,569
Add allowable non-operating income		7,318,360	8,217,357
Adjusted defined earnings ...		80,501,963	90,390,926

APPENDIX A-2

APPALACHIAN POWER COMPANY

Comparison of Rates in Effect Under Bond in Case No. 7083 With Rates Prior to Case No. 7083

	Prior Rates c per KWH	Rates Filed in 7083 c per KWH	Increase c per KWH	Percent Increase %
Tariff C.L.P. (Combined Light & Power)				
Primary (50 x capacity)	4.15	4.70	.55	13.25
Secondary (Excess over Primary)				
First 5,000 KWHrs	2.13	2.47	.34	15.96
Next 5,000	1.43	1.69	.26	18.18
Over 10,000	1.33	1.58	.25	18.80
Minimum Charge	Primary	Primary		13.25
Tariff R.S. (Residential Service)				
First 30 KWHrs per month ..	5.0	5.3	.3	6.00
Next 40	4.0	4.5	.5	12.50
Next 130	2.4	2.8	.4	16.67
Next 300	1.5	1.8	.3	20.00
Next 1,000	1.2	1.4	.2	16.67
Over 1,500	1.0	1.2	.2	20.00
Minimum	\$1.50 per month	\$2.50 per month	\$1.00 per month	66.67
Water Heater Service				
Last 400 KWHrs per month ..	1.0	1.2	.2	20.00
Tariff G.S. (General Service)				
50 x Monthly Demand				
First 30 KWHrs	5.0	5.64	.64	12.80
Over 30	3.75	4.26	.51	13.60
Next 150 x Monthly Demand				
First 3,000 KWHrs	2.4	2.76	.36	15.00
Over 3,000	1.5	1.77	.27	18.00
Over 200 x Monthly Demand ..	1.0	1.21	.21	21.00
Minimum Charge	\$1.50 per month	\$2.50 per month	\$1.00 per month	66.67
Tariff C.S. (Church Service)				
First 40 KWHrs per month ..	5.0	5.64	.64	12.80
Next 85	4.0	4.53	.53	13.25
Next 375	2.7	3.09	.39	14.44
Next 500	1.8	2.10	.30	16.67
Over 1,000	1.5	1.77	.27	18.00
Minimum Charge	\$1.50 per month	\$2.50 per month	\$1.00 per month	66.67

	Prior Rates c per KWH	Rates Filed in 7083 c per KWH	Increase c per KWH	Percent Increase %
Tariff C.P. (Capacity Power—Wholesale)				
100 x Contract Capacity:				
100 x First 50 Kva	3.14	3.59	.45	14.33
100 x next 50 Kva	2.74	3.14	.40	14.60
100 x next 50 Kva	1.74	2.04	.30	17.24
100 x next 150 Kva	1.54	1.81	.27	17.53
100 x over 300 Kva	1.34	1.59	.25	18.66
Excess of 100 x Capacity:				
First 50,000 KWHrs	1.33	1.58	.25	18.80
Next 50,000	1.23	1.47	.24	19.51
Next 200,000	1.13	1.36	.23	20.35
Over 300,000	1.03	1.31	.23	21.30
Minimum Charge	\$24 per Kva	\$24 per Kva	—	—
Tariff C.I.P. (Commercial—Industrial) formerly C.P.O. (Capacity Power—optional)				
First 30 x Monthly Demand	4.4	4.98	.58	13.18
Next 170 x Monthly Demand:				
First 3,000 KWHrs	2.13	2.47	.34	15.96
Next 3,000	1.93	2.25	.32	16.58
Next 4,000	1.73	2.03	.30	17.34
Next 10,000	1.53	1.80	.27	17.65
Next 80,000	1.33	1.58	.25	18.80
Over 100,000	1.13	1.36	.23	20.35
Next 160 x Monthly Demand74	.93	.19	25.68
Over 360 x Monthly Demand54	.71	.17	31.48
Minimum Charge	\$2.00 per Kva	\$2.00 per Kva	0	0
Tariff P.S.O. (Public School—Optional)				
All Energy	2.5	2.9	.4	16.00
Minimum Charge	\$2.50 per month	\$2.50 per month	0	0
Tariff E.H.G. (Electric Heating General)				
First 200 KWHrs	\$6.00 per month	\$6.85 per month	.85 per month	14.17
Next 6,800	1.5	1.77	.27	18.00
Over 7,000	1.2	1.43	.23	19.17
Each KW Demand in Excess of 30	\$1.25 per month	\$1.38 per month	.13 per month	10.40

	Prior Rates c per KWH	Rates Filed in 7083 c per KWH	Increase c per KWH	Percent Increase %
Tariff S.S. (School Service)				
First 500 KWHrs per Classroom	2.5	2.9	.4	16.00
Balance	.7	.9	.2	28.57
Tariff L.P.O. (Large Power — Optional)				
First 30 x Monthly Demand	4.4	4.98	.58	13.18
Next 170 x Monthly Demand:				
First 3,000 KWHrs	2.13	2.47	.34	15.96
Next 3,000	1.93	2.25	.32	16.58
Next 4,000	1.73	2.03	.30	17.34
Next 10,000	1.53	1.80	.27	17.65
Next 80,000	1.33	1.58	.25	18.80
Over 100,000	1.13	1.36	.23	20.35
Next 160 x Monthly Demand	.74	.93	.19	25.68
Over 360 x Monthly Demand	.54	.71	.17	31.48
Minimum Charge	\$1.30 per Kva	\$2.00 per Kva	\$.70 per Kva	53.85
Tariff L.C.P. (Large Capacity Power)				
First 1,000 KW Monthly Demand	\$3.92 per KW	4.69 per KW	.77 per KW	19.64
Next 3,000	3.43	4.14		20.70
Over 4,000	2.92	3.58		22.95
Energy in Excess of 315 KWHrs:				
Per KW Demand	.465	.63	.165	35.48
Demand Charge	.25 per Kvar	.28 per Kvar	.03 per Kvar	12.00
Tariff I.R.P. (Interruptible Power)				
Demand Charge:				
KW Demand	\$.667 per KW	.738 per KW	.071 per KW	10.64
Kvar Demand	.25 per Kvar	.28 per Kvar	.03 per Kvar	12.00
Energy Charge	.386	.538	.152	39.38
Tariff H.L.P. (High Load Factor Power)				
For 34.5-69 KV Delivery Voltage				
First 67,000 KW Demand	\$3.59 per KW	\$4.64 per KW	\$ 1.05 per KW	29.25
Next 33,000 KW	3.35 per KW	4.37 per KW	1.02 per KW	30.43
Over 100,000 KW	3.23 per KW	4.24 per KW	1.01 per KW	31.27

	Prior Rates c per KWH	Rates Filed in 7083 c per KWH	Increase c per KWH	Percent Increase %
For 138 KV Delivery Voltage				
First 67,000 KW Demand	\$3.51 per KW	\$4.55 per KW	\$ 1.04 per KW	29.63
Next 33,000	3.30 per KW	4.31 per KW	1.01 per KW	30.61
Over 100,000	3.18 per KW	4.18 per KW	1.00 per KW	31.45
Secondary — All Voltage				
Energy in Excess of 600 KWHrs per KW Demand	.03 per KW	.44 per KW	.14 per KW	46.67
Demand Charge	.25 per Kvar	.28 per Kvar	.03 per Kvar	12.00
Tariff O.L. (Outdoor Lighting)				
	Per Lamp Per Month	Per Lamp Per Month	Per Lamp Per Month	
Each 7,000 Lumen Mercury	\$4.00	\$4.50	\$.50	12.50
Each 11,000 Lumen Mercury	5.25	5.91	.66	12.57
Each 20,000 Lumen Mercury	6.25	7.08	.83	13.28
Each 2,500 Lumen Incandescent	3.00	3.39	.39	13.00
Each 4,000 Lumen Incandescent	3.50	3.98	.48	13.71
Each 7,000 Lumen Mercury on 12' Post	4.75	5.33	.53	12.21
Tariff T.P. (Transmission Power)				
For 34.5—69 KV Delivery Voltage				
First 25,000 KVA Demand	\$2.715 per KVA	3.34 per KVA	.625 per KVA	23.02
Over 25,000 Demand	2.475 per KVA	3.07 per KVA	.595 per KVA	24.04
For 138 KV Delivery Voltage				
First 25,000 KVA Demand	\$2.575 per KVA	3.18 per KVA	.605 per KVA	23.50
Over 25,000 KVA Demand	2.425 per KVA	3.02 per KVA	.595 per KVA	24.54
Secondary — All Voltage				
Energy in Excess of 300 KWHrs per KVA Demand	\$.335 per KWH	.48 per KWH	.145 per KWH	43.28

APPENDIX A-3
APPALACHIAN POWER COMPANY
Reconciliation Between Per Books and Final Adjusted Revenues.
Expenses and Rate Base, Based on Year Ended December 31, 1970

	Per Books	Adjustments Allowed By Commission	Explanation Of Adjustments	Adjusted	To Assign Expenses To Functions	Adjusted	Allocated To W. Va. Jurisdictional Customers
	\$	\$		\$	\$	\$	\$
Operating Revenues	199,213,531	1,321,522	Deficiency as stated in order	200,535,053		200,535,053	92,831,781
Operating Revenue Deductions		(755,005)	Coal cost adjustment-interest				
Expenses:		1,647	Insurance adjustment				
Power Production Expenses	66,942,995	8,363	F.I.C.A. increase	67,153,072	2,731,175	69,884,247	30,426,824
		(61,778)	Coal inventory adjustment				
		112,933	Wage increase -- affiliate				
		243,917	Wage adjustment				
		660,000	Pollution control facilities				
		24,824	Tree and brush control				
Transmission Expenses	4,130,859	33,913	Tower painting	4,295,255	1,092,156	5,387,411	2,485,727
		12,459	Contract labor				
		840	Gasoline tax increase				
		92,360	Wage adjustment				
		139,423	Tree and brush control				
		169,461	Pole treatment				
		66,949	Contract labor				
Distribution Expenses	11,651,753	2,805	Gasoline tax increase	12,283,584	2,992,691	15,276,275	8,250,316
		253,193	Wage adjustment				
		102,687	Postage increase				
Customer Accounts Expense	3,753,159	102,298	Wage adjustment	3,958,144	1,207,583	5,165,727	2,739,695

52

APPENDIX A-3
APPALACHIAN POWER COMPANY
Reconciliation Between Per Books and Final Adjusted Revenues, Expenses and Rate Base.
Based on Year Ended December 31, 1970

	Per Books	Adjustments Allowed By Commission	Explanation Of Adjustments	Adjusted	To Assign Expenses To Functions	Adjusted	Allocated To W. Va. Jurisdictional Customers
	\$	\$		\$	\$	\$	\$
Sales Expense	6,159,717	113,969	Wage adjustment	6,273,686	1,346,689	7,620,375	3,422,768
		18,119	Insurance adjustment				
		387,996	Insurance adjustment				
		90,312	Insurance adjustment				
Administrative and General	8,688,308	66,667	Rate case expense	9,370,294	(9,370,294)	0	
		118,892	Wage adjustment				
Total Expenses	101,326,791	2,007,244		103,334,035		103,334,035	47,325,330
Depreciation Expense	23,122,687	511,500	Pollution control facilities	23,634,187		23,634,187	10,954,422
Taxes Other Than Income Tax	17,592,704	467,343	Staff adjustments adopted	18,124,537		18,124,537	9,806,086
		64,490	• B. & O. Tax on deficiency				
Federal Income Tax	4,320,213	(1,411,156)	• Net effect of all adjustments	2,909,057		2,909,057	1,181,691
Total	146,362,395	1,639,421		148,001,816		148,001,816	69,267,529
Net Operating Income	52,851,136			52,533,237		52,533,237	23,564,252
Cost of Service							
Operating Revenue Deductions							69,267,529
Allowance for Return at 8.73%							23,564,252
Total							92,831,781
Test Year Revenues Adjusted to Going-Level Revenue Deficiency							91,510,259
							1,321,522

53

APPENDIX A-3
APPALACHIAN POWER COMPANY
Reconciliation Between Per Books and Final Adjusted Revenues,
Expenses and Rate Base, Based on Year Ended December 31, 1970

Rate Base	Per Books	Adjustments Allowed By Commission	Explanation Of Adjustments	Adjusted To Functions	Adjusted	Allocated to W. Va. Jurisdictional Customers
Plant in Service	\$ 809,606,726	\$ 16,500,000	Pollution control facilities	\$ 826,106,726	\$ 381,118,985	
Plant Held for Future Use	821,118			821,118	378,977	
Materials and Supplies	11,365,303			(11,365,303)		
Prepayments	611,187			611,187		
Cash Working Capital	9,463,588	250,906	% of operating exp. adjs	9,714,494		
Reserve for Depreciation	(253,884,162)	(511,500)	Pollution control facilities	(254,395,662)		(116,457,346)
Contributions	(1,760,856)			(1,760,856)		(938,430)
Deferred Federal Income Taxes	(35,412,718)	26,560,718	Emergency facilities	(8,852,000)		(4,090,314)
Total Rate Base	540,810,186	42,800,124		583,610,310		269,922,699
						23,564,252

Notes: * Calculated adjustment based on net effect of other revenue and/or expense adjustments.

Return at 8.73% on \$269,922,699 =

PUBLIC SERVICE COMMISSION
OF WEST VIRGINIA
CHARLESTON

At a session of the PUBLIC SERVICE COMMISSION OF WEST VIRGINIA, at the Capitol in the City of Charleston on the 14th day of February, 1975.

CASE NO. 7083

APPALACHIAN POWER COMPANY,
a corporation.

In the matter of
increased rates and charges.

INTERIM ORDER ON "PETITION FOR RE-HEARING, REOPENING OF THE RECORD, AND REARGUMENT" FILED BY APPALACHIAN POWER COMPANY

On January 31, 1975, the Commission issued its final order in the above-styled case. On February 7, 1975, Appalachian Power Company filed a seven-page document entitled "Petition for Rehearing, Reopening of the Record, and Reargument" (Hereinafter referred to as "Petition") pursuant to Rule 19 of the Rules of Practice and Procedure of this Commission. The petition, duly verified, was timely filed. However, the said petition is not in strict compliance with said Rule 19.

Rule 19(a) provides that: "Such petition shall state *specifically* the grounds relied upon." In addition, Rule 19(c) provides that "If the application be for rehearing or reargument after decision, the matters claimed to have been erroneously decided must be *specified and the alleged errors stated*. If thereby any order of the Commission is sought to be vacated, reversed, or modified, by reason of matters which have arisen since the

hearing, or by reason of consequences which would result from compliance therewith, or by reason of facts not in possession of the petitioner at the time of the hearing, *the matter so relied upon by the petitioner must be fully set forth in the petition.*" Moreover, Rule 19(e) provides that an adverse party may file and serve a reply to a petition for rehearing, reopening of the record and reargument within five days after service of the said petition.

No reply in opposition to the grant of the petition for rehearing was filed by any of the parties to this proceeding.

An examination of the petition filed by Appalachian Power Company indicates the following:

1. The duly verified petition is signed and timely filed by Miller C. Porterfield, Vice President of Appalachian Power Company, but is not signed by any attorney of record for the utility, although on February 13, 1975, the Commission received a Memorandum in support of Appalachian's petition signed by or on behalf of Charles C. Wise, Jr., and Charles R. McElwee, as attorneys for the utility.

2. As noted by a recital of excerpts from subdivisions (a), (c), and (e) of Rule 19 and a review of the allegations 1 through 9 of the petition, there are some questions of ambiguity or vaguity as to the *specific* grounds relied upon by Appalachian or *specific* errors charged to the Commission by the utility.

In addition, the said petition failed to set forth fully the matters relied upon which have arisen since the hearing or consequences which would result from compliance with the Commission's order of January 31, 1975, as to which relief is sought. Moreover, petitioner

did not *fully* or at all set forth *facts* which were not in possession of petitioner at the time of the hearing.

Regardless of these deficiencies in Appalachian's petition for rehearing, and partly because of the fact that there was no objection to the petition for rehearing by adverse parties, the said petition will hereinafter be granted in part, denied in part, and the balance deferred until after oral argument set by this order.

In Paragraph 1 of its said petition for rehearing, the utility alleges that the Commission's order of January 31, 1975, used "outmoded formulas" and a "stale test period". These allegations and their implications require additional preciseness and specificity before the Commission can act upon the petition.

In Paragraph 2 of its petition, the utility alleges that the "effect of the order is literally to wipe out Appalachian's available coverage and, with it, its remaining ability to sell senior securities. Appalachian's financial integrity is therefore seriously, and, possibly, critically jeopardized by this order." The seriousness of this allegation alone requires further consideration by the Commission on oral argument prior to further action on the petition.

Paragraph 3 of the petition involves a general allegation that the "end result" test of the *Hope* case has not been met by the order complained of.

The allegation set forth in Paragraph 4 of the petition refers to an alleged error resulting from the Commission's order of September 16, 1974, in this case in which the Commission required an interim modification of Appalachian's fuel adjustment clause. As recited in

the Commission's order of January 31, 1975, Appalachian filed on September 24, 1974, a petition for rehearing on this order of September 16, 1974. This September petition for rehearing was denied by the Commission by its order issued October 18, 1974. Thus the order of September 16, 1974, has long since become final. Therefore, because of the fact that Code 24-5-1 requires that the party feeling aggrieved by a final order of the Commission may present a petition in writing to the Supreme Court of Appeals within thirty (30) days after entry of such order, praying for the suspension of such final order, the petitioner here comes too late as of February 7, 1975, to attack the Commission's final order of September 16, 1974, and raising this issue at this time is a collateral attack on the September order.

In Paragraph 5 of its petition, Appalachian objected to the timing required in the order of January 31, 1975, as to its obligation to grant refunds and to file revised rate schedules. The utility's objection to this timing is well-taken and relief as to this matter will be granted by the modification set forth below in this order.

In paragraph 6 of the petition, the utility objects to the fact that E. Dandridge McDonald acted as counsel and as a witness for an adverse party in the early part of the hearing in this case and then took part in the preparation of the Staff's Brief and signed the same at the latter stages of this proceeding. Because Appalachian hints of an impropriety in this matter, this issue will be the subject of the further proceedings in this case which will be provided for below.

In Paragraph 7 of the petition, the utility raises a legal issue under Code 24-2-4 pertinent to the time within

which the Commission shall render its decision after the completion of hearing.

In Paragraph 8 of its petition, Appalachian appears to suggest that the Commission's order will cause financial and economic effects which cannot be corrected because of the law of "reparations". This, too, is a factual-legal question which will be considered at a later stage of this proceeding pursuant to the provisions of this order.

In Paragraph 9 of its petition, the utility suggests a reopening of the record to receive "evidence as to the actual results for the intervening period" (i.e., apparently July 1971 to date); also, it alleges that its evidence would show "that an increase of only \$1,321,522 based on 1970 test year results is confiscatory as applied to Appalachian in the intervening years."

The utility's serious allegations glossed above and the requirements of Rule 19 of the Commission's Rules of Practice and procedure, require the following order:

ORDER

A. The Commission hereby affirms its ordering Paragraphs 1 and 4 of its order issued herein on January 31, 1975, subject to further order after oral argument to be held pursuant to this order.

B. The Commission orders that Paragraphs 2 and 3 of its order issued January 31, 1975, be revised and modified to read as follows:

2. Appalachian Power Company is ordered to file revised sheets for all of its P.S.C. W. Va. No. 2 tariff schedules, which will be effective on and after July

29, 1971, containing first revised sheets where appropriate which set forth reduced rates and charges under the rate design used in its filing on February 3, 1971, at levels which are only high enough to recover the 1970 test-year deficiency of \$1,321,522, over the revenue level of the 1970 test year. These revisions should be filed within sixty (60) days of the date of this order of January 31, 1975, and the revisions shall be subject to the approval by this Commission as to their conformity with the findings and conclusions stated herein.

3. Respondent shall refund to each of its customers within ninety (90) days of the date the revised rates filed pursuant to Paragraph 2 are approved by order of this Commission as being finally put into effect as of July 29, 1971, with interest at the rate of six percent (6%) per annum from the time collected to the date of the refund, and shall promptly report such refunds to the Commission.

C. The Commission orders that the parties to this proceeding appear before it on February 21, 1975, at 10:00 a.m., for oral argument on the matters alleged by Appalachian Power Company in Paragraphs 1, 2, 3, 6, 7, 8, and 9 of this petition for rehearing.

D. The Commission orders that at the oral argument to be held on February 21, 1975, Mr. Miller C. Porterfield be present to be sworn and his additional testimony be given on matters pertaining to his allegation in Paragraph 6 of the petition for rehearing prior to any further ruling by this Commission on Paragraph 6 of said petition.

E. The Commission orders that further consideration of the matters raised in Paragraphs 1, 2, 3, 6, 7, 8, and

9 be deferred until after oral argument and the testimony of Mr. Miller C. Porterfield to be taken on February 21, 1975.

A Copy.

Teste:

S. GROVER SMITH, JR.
Secretary

PUBLIC SERVICE COMMISSION
OF WEST VIRGINIA
CHARLESTON

At a session of the PUBLIC SERVICE COMMISSION OF WEST VIRGINIA, at the Capitol in the City of Charleston on the 21st day of March, 1975.

CASE NO. 7083

APPALACHIAN POWER COMPANY,
a corporation.

In the matter of
increased rates and charges.

ORDER DENYING IN PART AND GRANTING IN
PART PETITIONS FOR REHEARING FILED BY
APPALACHIAN POWER COMPANY

POST-DECISIONAL PROCEDURE

Subsequent to the final decision of the Commission dated January 31, 1975, Appalachian filed a petition for rehearing on February 7, 1975. On February 14, 1975, the Commission issued its interim order, which, among other things, set February 21, 1975, for oral argument and limited testimony on matters alleged by Appalachian Power Company in Paragraphs 1, 2, 3, 6, 7, 8 and 9 of its first petition for rehearing. On February 25, 1975, Appalachian filed its second petition for rehearing, going to the Commission's interim order of February 14, 1975, as well as to portions of its order of January 31, 1975, in this proceeding.

At the close of the session on February 21, 1975, the Commission continued this phase of the post-decisional proceedings to March 7, 1975, to permit Appalachian's counsel, Charles C. Wise, Jr., to be present and be heard on behalf of his client, as well as to permit Appalachian

to present the evidence of one witness to support its argument on the importance of debt coverage to the utility's ability to finance. The purpose of these post-decisional proceedings was to permit the Commission to decide whether or not, and to what extent, to grant relief as prayed for in Appalachian's two petitions for rehearing.

DISCUSSION

These two post-decision sessions were useful in confirming the Commission's belief that its prior orders in this case were correct. However, the Commission finds that Appalachian should be granted certain limited procedural relief so as to have the opportunity to present actual cost evidence on the issue of the just and reasonableness of its rates for the period on and after January 1, 1974, through March 31, 1975. Moreover, the limited procedural relief granted herein does not relieve Appalachian in any way from its obligation to file lower rates and to make immediate refunds to its customers for the period from July 29, 1971, through December 31, 1973, under our order of January 31, 1975. The lower rates ordered to be filed for the interim July 29, 1971, through December 31, 1973, are final.

The remaining ultimate issue of the extent to which the originally filed rates now in effect, subject to refund, should be lowered for the period January 1, 1974, through March 31, 1975, remains open until our decision after further evidence is taken pursuant to this order. The actual cost evidence to be presented by Appalachian shall be limited to the period of time subsequent to December 31, 1973, and shall be presented by applying the ratemaking principles established in our said order issued January 31, 1975. There are ample precedents in past cases decided by this Commission for it

to establish two different levels of rates for two sequential time periods within one numbered case. *C & P Telephone Company*, order issued May 4, 1972, Case No. 6855. The legal principle has also been established that a regulatory commission may set interim rates and order immediate refunds thereon, while other issues in the same rate case are pending for subsequent decision. *F.P.C. v. Tennessee Gas Transmission Company*, (1962) 371 US 145, 83 S.Ct. 211, 46 PUR 3d 347.

The basis of this order which denies in part and grants in part the petitions for rehearing are best discussed under topical sections rather than by incidental references to the numbered paragraphs of the first petition for rehearing, since some of the grounds relied upon by Appalachian in its petitions for rehearing are overlapping or intermingled.

1. Ratemaking Principles.

Appalachian's first ground of alleged error was to accuse the Commission of the use of "outmoded formulas" in ratemaking, although Appalachian did not specify any particulars. However, at the oral argument at page 30 of the transcript for February 21, 1975, counsel for Appalachian abandoned this ground and stated that they were "specifically *not* challenging in this proceeding your use of the average rate base *or the other ratemaking philosophies embedded in your decision.*"

Instead, Appalachian focused its attack on the Commission's order to the general complaint that the "end result" of our order "impaired Appalachian's credit standing" and "has precluded Appalachian from attracting additional capital on a reasonable basis necessary to carry out its public service obligations," citing *F.P.C. v. Hope Natural Gas Co.*, (1944) 320 U.S.591, 64 S.Ct. 281.

Appalachian's financial troubles have not been caused by any ill treatment by this Commission. At page 14 of the transcript for February 21, 1975, counsel for Appalachian volunteered that the utility was unable to sell \$44 million of pollution control bonds, but had to settle for \$24 million. This financial difficulty occurred *prior* to the issuance of our order of January 31, 1975, and during a time when Appalachian was receiving all of the revenues from its West Virginia customers that it had applied for, albeit that a portion of the revenues have since been ordered to be refunded with interest. At page 41 of the transcript, counsel admitted that our order was not the sole cause of Appalachian's problems, but was the "crowning blow," that is, after the fact.

Other than the invalid implication that this Commission should "guarantee" a fair rate of return, rather than to give Appalachian the *opportunity* to earn a fair rate of return, Appalachian's only other specific complaint with our ratemaking was the use of a "stale test period," 1970. At page 29 on the transcript, counsel for Appalachian admitted that the selection of the test year of 1970 for a 1973 hearing was the Company's option. It was not imposed by the Commission. At the time of the 1973 hearing, Appalachian could have elected to prove its case by using 1971, 1972, or a twelve-month period ending in early 1973, or some other appropriate twelve months' period to be chosen as a representative test period. Appalachian elected not to do so. Instead, it relied on a 1970 test year and at the same time during the hearing adjusted the test year cost of service by cost of capital evidence based on *year end 1972*. The Commission relied on this evidence of factual data which occurred two years after the end of the test period. It did this primarily because of the occurrence of regulatory lag, for which the Commission was only partly responsible.

Further, it is because of its partial responsibility for regulatory lag that the Commission is here reopening the evidentiary record in this case for the period beginning January 1, 1974. By this procedure, the Commission is neutralizing any adverse procedural effect of the time lag between the end of the briefing period and the issuance of its final decision and order on January 31, 1975. Code 24-2-4, provides that "when all evidence shall have been taken, and the hearing completed, the Commission shall, within three months, render a decision" in any pending case. Our action herein permitting a limited reopening of the evidentiary record brings us within the statutory requirement just quoted, while at the same time protecting the rights of the consumers to quick refunds for the 1971-1973 period that is final.

Although the Commission shares some of the responsibility for the 1974 regulatory lag, it is clear that Appalachian is *solely* responsible for the staleness of a 1970 test period, for the periods of time in 1971, 1972 and 1973. Any financial difficulty in which Appalachian finds itself for the period ending December 31, 1973, is of its own doing. The Commission must rely on the record which was made in 1973, and confirmed by Appalachian's unaudited Annual Reports to the Commission for 1972 and 1973, insofar as the issue of debt coverage is concerned.

The issue of adequate debt service coverage to enable Appalachian to raise necessary new capital in 1975 from investors depends upon Appalachian's income and expenses for 1974 and early 1975. Appalachian has already raised money from investors in 1971, 1972, 1973 and 1974, with what must have been adequate debt service coverage. (Transcript March 7, 1975, pages 58-59.) Actual data covering 1971, 1972, and 1973 will not aid Appalachian's debt service coverage requirements for its 1975 financing.

Our action today in permitting a limited reopening of the record for current actual data beginning January 1, 1974, permits Appalachian's debt coverage to remain at 2.24 times for immediate financing efforts of Appalachian, including a pending stock offering. The debt service coverage for late 1975 or 1976 financing may be more or less than 2.24 depending upon our actions on the reopened record provided for herein *and* the actions of other Federal and State governmental agencies in which Appalachian has or may seek relief. None of the witnesses for Appalachian who testified on February 21 and March 7, 1975, would state that rate relief in West Virginia alone would solve Appalachian's financial troubles or permit them to continue its suspended 1975 construction program. (Transcript February 21, 1975—G. P. Maloney, pages 141-15; John W. Vaughan, page 169; Richard Disbrow, pages 184-186; T. J. Vogel, pages 194-196; Transcript March 7, 1975—Jerome S. Katzin, pages 51-54, 57-60.)

The limited reopening of the record for Appalachian's actual experience for the period beginning January 1, 1974, and our denial of Appalachian's petition to reopen for the period 1971 through 1973, follow two applicable principles.

First, the limited reopening gives Appalachian an opportunity to prove that the effects of our order of January 31, 1975, are unduly harsh, which, unless modified, would prevent needed financing "contrary to the best interests of Appalachian's *customers*." Moreover, since under West Virginia law, reparations for past losses are not available to a utility, except within our statutory framework of definite refund periods, Appalachian's right to minimize its obligation to make

refunds in excess of collections made on and after January 1, 1974, is retained for this limited period until after further hearing. This is in keeping with our observations at pages 10 and 25 [pages 18 and 38 of this Appendix to Jurisdictional Statement] of our order of January 31, 1975, of possible avenues of relief open to Appalachian in the event the effects of our order were "unduly harsh" or if Appalachian's growing pains were made more acute by our order.

Second, there must be an end to litigation. In this respect, the *customers* of Appalachian have the right to receive immediate refunds with interest "to afford consumers a complete, permanent, and effective bond of protection from excessive rates and charges." Cf. *F.P.C. v. Tennessee Gas Transmission Co.*, *supra*, 46 PUR 3d, at page 353. Since Appalachian's losses in the period 1971 through 1973 are due entirely to its evidentiary approach in the full hearing granted, it must shoulder the hazards incident to its action, including the refund of any illegal gain.

2. Other Issues.

In Paragraph 6 of its first petition for rehearing, the utility cites as error the fact that the Commission adopted certain recommendations in the staff brief merely because it was prepared in part and solely signed by E. Dandridge McDonald, who appeared earlier in this case for an intervenor representing certain residential consumers and later joined the legal staff of the Commission. The ground for alleged error is entirely rejected by the Commission as without basis in law or fact or as a breach of ethics. Appalachian raised no question about the conduct of Mr. McDonald during the hearing. It did not show he took an inconsistent position in his two roles. However, the most telling point to completely

vindicate Mr. McDonald is that counsel for Appalachian, Mr. Charles C. Wise, Jr., was completely apprised of the situation by all three of the then Commissioners and he did not object and fully advised his client of Mr. McDonald's participation in this case on behalf of the staff. (Transcript, March 7, 1975, pages 4-13.) Thus, this Commission finds and concludes that the actions of Appalachian's counsel binds his client and Appalachian cannot now, for the first time, raise in its first petition for rehearing any question as to the propriety of Mr. McDonald's participation in these proceedings.

The grounds of error set forth in Paragraphs 4 and 5 of Appalachian's first petition for rehearing were fully considered and acted upon by the Commission in its interim order herein, issued on February 14, 1975, and are hereby confirmed, with the exception that because of the time required for the interim procedure between our order of January 31, 1975, and today, the periods of time to file revised rates and to make refunds will be extended for thirty (30) days, as hereinafter provided.

Appalachian's second petition for rehearing filed February 24, 1975, raises no new matters and appears to have been filed to preserve its right to seek judicial review of our interim order issued February 14, 1975, and is, therefore, denied in its entirety as being without basis in law or fact.

It is to be noted that this Commission's order of February 20, 1975, in Case No. 7945, will require Appalachian to file new tariff sheets to be effective April 1, 1975, pursuant to ruling on fossil fuel adjustment clauses in the tariffs of electric companies subject to our jurisdiction.

ORDER

A. The Commission orders that Paragraph 1 of its order issued January 31, 1975, be revised and modified to read as follows:

1. The tariff sheets filed with the Commission by the respondent, Tariff P.S.C. W. Va. No. 2, issued February 3, 1971, are ordered to be amended hereby as to their effective and terminating dates, to be January 1, 1974, and March 31, 1975, respectively.

B. The Commission orders that Paragraphs 2 and 3 of its order issued January 31, 1975, as revised and modified by its interim order issued February 14, 1975, be further revised and modified to read as follows:

2. Appalachian Power Company is ordered to file revised sheets for all of its P.S.C. W. Va. No. 2 tariff schedules, which will be effective on and after July 29, 1971, through December 31, 1973, containing first revised sheets where appropriate which set forth reduced rates and charges under the rate design used in its filing on February 3, 1971, at levels which are only high enough to recover the 1970 test-year deficiency of \$1,321,522, over the revenue level of the 1970 test year. These revisions should be filed within ninety (90) days of the date of this order of January 31, 1975, and the revisions shall be subject to the approval by this Commission as to their conformity with the findings and conclusions stated herein.

3. Respondent shall refund to each of its customers within one hundred-twenty (120) days of the date the revised rates filed pursuant to Paragraph 2 are approved by order of this Commission as being finally put into effect as of July 29, 1971, with interest

at the rate of six percent (6%) per annum from the time collected to the date of the refund, and shall promptly report such refunds to the Commission.

C. The Commission hereby affirms its ordering Paragraph 4 of its order issued herein on January 31, 1975.

A Copy.

Teste:

S. GROVER SMITH, JR.,
Secretary

STATE OF WEST VIRGINIA

At a Regular Term of the Supreme Court of Appeals continued and held at Charleston, Kanawha County, on the 23rd day of June, 1975, the following order was made and entered, to-wit:

APPALACHIAN POWER COMPANY,
a corporation

vs.

(P.S.C. Case No. 7083)

THE PUBLIC SERVICE COMMISSION
OF WEST VIRGINIA

Upon an appeal from, suspension and review of the final order of the Public Service Commission of West Virginia made and entered on March 21, 1975.

The Court having maturely considered the petition and note of argument thereof; the record consisting of all papers, documents and evidence which were before the Public Service Commission at the hearing which resulted in the entry of the final order complained of; the statement of reasons for the entry of its order of the 21st day of March, 1975, filed herein by the respondent, Public Service Commission of West Virginia on April 22, 1975; and the oral argument of counsel on the 22nd day of April, 1975, the date fixed by the Court for hearing upon the aforesaid petition; is of opinion that the petitioner has not shown itself entitled to the relief prayed for in its said petition. It is therefore considered and ordered that the prayer of the petition for an appeal from, suspension and review, in this proceeding, be, and the same is hereby, denied. Justice Berry deeming himself disqualified did not participate in the consideration of this proceeding.

It is further ordered that leave be, and the same is hereby, granted to the Public Service Commission of West Virginia to withdraw from the office of the Clerk of this Court, the record consisting of all papers, documents and evidence originally filed with the Public Service Commission of West Virginia.

A True Copy

Attest:

s/ GEORGE W. SINGLETON
Clerk Supreme Court of Appeals

STATE OF WEST VIRGINIA

At a Regular Term of the Supreme Court of Appeals continued and held at Charleston, Kanawha County, on the 29th day of July, 1975, the following order was made and entered, to-wit:

APPALACHIAN POWER COMPANY,
a corporation

vs. (P.S.C. Case No. 7083)

THE PUBLIC SERVICE COMMISSION
OF WEST VIRGINIA

On a former day, to-wit, July 23, 1975, came James, Wise, Robinson & Magnuson and Charles R. McElwee; LeBoeuf, Lamb, Lieby & MacRaw, Carl D. Hobelman and Samuel M. Sugden; A. Joseph Dowd and John R. Burton, counsel for Appalachian Power Company, a corporation, and presented to the Court its "motion for reconsideration of the Court's Order of June 23, 1975, and petition for rehearing on its petition for appeal and review filed on April 7, 1975, and for incidental or alternative relief specified in the prayer hereof", amendment and revision of said motion, and note of argument in support thereof, and the Court having seen and inspected said motion is of opinion not to consider the same as not timely filed. Justice Berry, deeming himself disqualified, did not participate. Justice Neely absent.

A True Copy

Attest:

s/ GEORGE W. SINGLETON
Clerk Supreme Court of Appeals

IN THE SUPREME COURT OF APPEALS
OF WEST VIRGINIA
CHARLESTON

APPALACHIAN POWER COMPANY,
a corporation,

Appellant,
No. _____

v. (P.S.C. Case No. 7083)

PUBLIC SERVICE COMMISSION
OF WEST VIRGINIA,

Appellee.

NOTICE OF APPEAL TO THE SUPREME COURT
OF THE UNITED STATES

Notice is hereby given that Appalachian Power Company, the appellant above named, hereby appeals to the Supreme Court of the United States from the final order of the Supreme Court of Appeals of the State of West Virginia entered in this proceeding on June 23, 1975, which denied Appalachian Power Company's Petition for an appeal from, and review of, certain orders issued by the Public Service Commission of West Virginia, the appellee above named, on September 16, 1974 and October 18, 1974, and further issued on January 31, 1975, February 14, 1975 and March 21, 1975.

This appeal is taken pursuant to 28 U.S.C. § 1257(2).

Dated: June 30, 1975.

s/ CHARLES R. McELWEE
Counsel for Appalachian Power Company,
Appellant

James, Wise, Robinson & Magnuson
316 Charleston National Plaza
Post Office Box 951
Charleston, West Virginia 25323

Carl D. Hobelman, Esquire and
Samuel M. Sugden, Esquire
LeBoeuf, Lamb, Leiby & MacRae
140 Broadway
New York, New York 10005

John R. Burton, Esquire
Associate General Counsel
American Electric Power Service Corporation
2 Broadway
New York, New York 10004

Of Counsel

FILED

JUN 30 1975

S/ GEORGE W. SINGLETON

CLERK OF THE SUPREME COURT
OF APPEALS OF WEST VIRGINIA

Affidavit of Service of Notice of Appeal

STATE OF WEST VIRGINIA,
COUNTY OF KANAWHA, TO-WIT:

I, Charles R. McElwee, an attorney in the office of James, Wise, Robinson & Magnuson, attorneys of record for Appalachian Power Company, appellant herein, depose and say that on the 30th day of June, 1975, I served a copy of the foregoing Notice of Appeal to the Supreme Court of the United States upon the Public Service Commission of West Virginia, appellee herein, by delivering the same to John E. Lee and E. Dandridge McDonald, counsel of record for said Public Service Commission of West Virginia, at their offices in the State Capitol, Charleston, West Virginia.

S/ CHARLES R. McELWEE

Subscribed and sworn to before me MARY N. STAPLES, at Charleston, West Virginia, this 30th day of June, 1975.

S/ MARY N. STAPLES
Notary Public in and for
Kanawha County, West Virginia

My commission expires June 6, 1985.

IN THE SUPREME COURT OF APPEALS
OF WEST VIRGINIA
CHARLESTON

APPALACHIAN POWER COMPANY,
a corporation,

Appellant,

No. _____

v. (P.S.C. Case No. 7083)

PUBLIC SERVICE COMMISSION OF
WEST VIRGINIA,

Appellee.

NOTICE OF APPEAL TO THE SUPREME COURT
OF THE UNITED STATES

Notice is hereby given that Appalachian Power Company, the appellant above named, hereby appeals to the Supreme Court of the United States from the final order of the Supreme Court of Appeals of the State of West Virginia entered in this proceeding on June 23, 1975, and from that Court's order of July 29, 1975, which denied Appalachian Power Company's Petition for an appeal from, and review of, certain orders issued by the Public Service Commission of West Virginia, the appellee above named, on September 16, 1974 and October 18, 1974, and further issued on January 31, 1975, February 14, 1975 and March 21, 1975.

This appeal is taken pursuant to 28 U.S.C. §1257 (2).

Dated: October 14, 1975.

s/ CHARLES R. McELWEE

*Attorney for Appalachian Power Company,
Appellant*

A. Joseph Dowd, *General Counsel* and
John R. Burton, *Associate General Counsel*
American Electric Power Service
Corporation
2 Broadway
New York, New York 10004

Carl D. Hobelman, Esquire and
Samuel M. Sugden, Esquire and
John B. Chase
LeBoeuf, Lamb, Leiby & MacRae
140 Broadway
New York, New York 10005

Charles R. McElwee
James, Wise, Robinson & Magnuson
316 Charleston National Plaza
Post Office Box 951
Charleston, West Virginia 25323

Attorneys for Appellant.

Appalachian Power Company

FILED

OCT 14 1975

s/ GEORGE W. SINGLETON

CLERK OF THE SUPREME COURT
OF APPEALS OF WEST VIRGINIA

Affidavit of Service of Notice of Appeal

STATE OF WEST VIRGINIA,
COUNTY OF KANAWHA, TO-WIT:

I, Charles R. McElwee, an attorney in the office of James, Wise, Robinson & Magnuson, attorneys of record for Appalachian Power Company, appellant herein, depose and say that on the 14th day of October, 1975, I served a copy of the foregoing Notice of Appeal to the Supreme Court of the United States upon the Public Service Commission of West Virginia, appellee herein, by delivering the same to E. Dandridge McDonald, counsel of record for said Public Service Commission of West Virginia, at his office in the State Capitol, Charleston, West Virginia.

s/ CHARLES R. McELWEE

Subscribed and sworn to before me MARY N. STAPLES,
at Charleston, West Virginia this 14th day of October,
1975.

s/ MARY N. STAPLES
*Notary Public in and for
Kanawha County, West Virginia*

My commission expires June 6, 1985.

PUBLIC SERVICE COMMISSION
OF WEST VIRGINIA
CHARLESTON

APPALACHIAN POWER COMPANY,
a corporation,

Appellant,

v. (P.S.C. Case No. 7083)

PUBLIC SERVICE COMMISSION
OF WEST VIRGINIA,

Appellee.

**NOTICE OF APPEAL TO THE SUPREME COURT
OF THE UNITED STATES**

Notice is hereby given that Appalachian Power Company, the appellant above named, hereby appeals to the Supreme Court of the United States from the final orders issued in this proceeding by the Public Service Commission of West Virginia, the appellee above named, on September 16, 1974 and October 18, 1974, and further issued on January 31, 1975, February 14, 1975 and March 21, 1975, paragraph 2 of said order of January 31, 1975, as amended, having been suspended by said Commission until July 3, 1975, and a petition for appeal from which orders was denied by the West Virginia Supreme Court of Appeals on June 23, 1975.

This appeal is taken pursuant to 28 U.S.C. § 1257(2).

Dated: July 2, 1975.

s/ CHARLES R. McELWEE
*Counsel for Appalachian Power Company
Appellant*

James, Wise, Robinson & Magnuson
316 Charleston National Plaza
Post Office Box 951
Charleston, West Virginia 25323

Carl D. Hobelman, Esquire and
Samuel M. Sugden, Esquire
LeBoeuf, Lamb, Leiby & MacRae
140 Broadway
New York, New York 10005

John R. Burton, Esquire
Associate General Counsel
American Electric Power Service Corporation
2 Broadway
New York, New York 10004

Of Counsel

RECEIVED

1975 JUL -2 PM 4:46

PUBLIC SERVICE COMMISSION OF W. VA.
SECRETARY'S OFFICE

Affidavit of Service of Notice of Appeal
STATE OF WEST VIRGINIA,
COUNTY OF KANAWHA, TO-WIT:

I, Charles R. McElwee, an attorney in the office of James, Wise, Robinson & Magnuson, attorneys of record for Appalachian Power Company, appellant herein, depose and say that on the 2d day of July, 1975, I served a copy of the foregoing Notice of Appeal to the Supreme Court of the United States upon FMC Corporation, Intervenor, by depositing the same in a United States mail box, with first class postage prepaid, addressed to its counsel of record, T. D. Kauffelt, Esquire, P. O. Box 1386, Charleston, West Virginia, 25325, and F. T. Graff, Jr., Esquire, P. O. Box 1386, Charleston, West Virginia 25325; upon Logan Coal Operators Association, Island Creek Coal Company, and Semet Solvay Division, Intervenor, by depositing the same in a United States mail box, with first class postage prepaid, addressed to their counsel of record, Paul Chambers, Esquire, P. O. Box 553, Charleston, West Virginia 25322; and Charles Q. Gage, Esquire, P. O. Box 553, Charleston, West Virginia, 25322; upon Appalachian Research and Defense Fund, Mercer County Economic Corporation, Intervenor, by depositing the same in a United States mail box, with first class postage prepaid, addressed to their counsel of record, Robert Rodecker, Esquire, 1116-B Kanawha Boulevard, East, Charleston, West Virginia, 25301; and upon the Public Service Commission Staff by depositing the same in the United States mail box, with first class postage prepaid, addressed to its counsel of record, John Lee, Staff Counsel, Public Service Commission, State Capitol, Charleston, West Virginia, 25305.

s/ CHARLES R. McELWEE

Subscribed and sworn to before me BARBARA J. DIXON
at Charleston, West Virginia, this 2nd day of July, 1975.

s/ BARBARA J. DIXON
*Notary Public in and for
Kanawha County, West Virginia*

My commission expires June 17, 1980.

PUBLIC SERVICE COMMISSION
OF WEST VIRGINIA
CHARLESTON

APPALACHIAN POWER COMPANY
a corporation,

Appellant,
v. (P.S.C. Case No. 7083)

PUBLIC SERVICE COMMISSION OF
WEST VIRGINIA,

Appellee.

NOTICE OF APPEAL TO THE SUPREME COURT
OF THE UNITED STATES

Notice is hereby given that Appalachian Power Company, the appellant above named, hereby appeals to the Supreme Court of the United States from the final orders issued in this proceeding by the Public Service Commission of West Virginia, the appellee above named, on September 16, 1974 and October 18, 1974, and further issued on January 31, 1975, February 14, 1975 and March 21, 1975, paragraph 2 of said order of January 31, 1975, as amended, having been suspended by said Commission until July 3, 1975, and a petition for appeal from which orders was denied by the West Virginia Supreme Court of Appeals on June 23, 1975, and its denial was sustained by a further order of the West Virginia Supreme Court of Appeals on July 29, 1975.

This appeal is taken pursuant to 28 U.S.C. § 1257(2).
Dated: October 14, 1975.

s/ CHARLES R. McELWEE
*Attorney for Appalachian Power Company,
Appellant*

A. Joseph Dowd, *General Counsel* and
 John R. Burton, *Associate General Counsel*
 American Electric Power Service
 Corporation
 2 Broadway
 New York, New York 10004

Carl D. Hobelman, Esquire and
 Samuel M. Sugden, Esquire and
 John B. Chase
 LeBoeuf, Lamb, Leiby & MacRae
 140 Broadway
 New York, New York 10005

Charles R. McElwee
 James, Wise, Robinson & Magnuson
 316 Charleston National Plaza
 Post Office Box 951
 Charleston, West Virginia 25323

Attorneys for Appellant,

Appalachian Power Company

RECEIVED

1975 OCT 14 PM 4:29

PUBLIC SERVICE COMMISSION OF W. VA.
 SECRETARY'S OFFICE

Affidavit of Service of Notice of Appeal

STATE OF WEST VIRGINIA,
 COUNTY OF KANAWHA, TO-WIT:

I, Charles R. McElwee, an attorney in the office of James, Wise, Robinson & Magnuson, attorneys of record for Appalachian Power Company, appellant herein, depose and say that on the 14th day of October, 1975, I served a copy of the foregoing Notice of Appeal to the Supreme Court of the United States upon FMC Corporation, Intervenor, by depositing the same in a United States mail box, with first class postage prepaid, addressed to its counsel of record, T. D. Kauffelt, Esquire, P. O. Box 1386, Charleston, West Virginia, 25325, and F. T. Graff, Jr., Esquire, P. O. Box 1386, Charleston, West Virginia 25325; upon Logan Coal Operators Association, Island Creek Coal Company, and Semet Solvay Division, Intervenors, by depositing the same in a United States mail box, with first class postage prepaid, addressed to their counsel of record, Paul Chambers, Esquire, P. O. Box 553, Charleston, West Virginia 25322, and Charles Q. Gage, Esquire, P. O. Box 553, Charleston, West Virginia, 25322; upon Appalachian Research and Defense Fund, Mercer County Economic Corporation, Intervenors, by depositing the same in a United States mail box, with first class postage prepaid, addressed to their counsel of record, Robert Rodecker, Esquire, 1116-B Kanawha Boulevard, East, Charleston, West Virginia, 25301; and upon the Public Service Commission Staff by depositing the same in the United States mail box, with first class postage prepaid, addressed to its counsel of record, E. Dandridge

McDonald, Staff Counsel, Public Service commission,
State Capitol, Charleston, West Virginia, 25305.

s/ CHARLES R. McELWEE

Subscribed and sworn to before me MARY N. STAPLES,
at Charleston, West Virginia, this 14th day of October,
1975.

s/ MARY N. STAPLES
Notary Public in and for
Kanawha County, West Virginia

My commission expires June 6, 1985.

WEST VIRGINIA CODE

§ 24-1-7. Rules of procedure; commission not bound by rules of evidence or pleadings; inscription on, use of and judicial notice of seal.*

The commission shall prescribe rules of procedure and for taking evidence in all matters that may come before it, and enter such orders as may be just and lawful. In the investigations, preparations and hearings of cases, the commission shall not be bound by the technical rules of pleading and evidence, but in that respect it may exercise such discretion as will facilitate its efforts to understand and learn all the facts bearing upon the right and justice of the matters before it.

The commission shall have a seal bearing the following inscription: "The Public Service Commission of West Virginia." The seal shall be affixed to all writs and authentications of copies of records, and to such other instruments as the commission shall direct. All courts shall take judicial notice of said seal. (1913, c. 9, § 2; 1915, c. 8, § 2; Code 1923, c. 15-0, § 2.)

*printed in: West Virginia Code, Volume 9, The Michie Company, § 24-1-7, at 7 (1971 Replacement Volume)

WEST VIRGINIA CODE

§ 24-2-3. General power of commission with respect to rates.*

The commission shall have power to enforce, originate, establish, change and promulgate tariffs, rates, joint rates, tolls and schedules for all public utilities except carriers by vehicles over streets and roads, including municipalities supplying gas, electricity or water. And whenever the commission shall, after hearing, find any existing rates, tolls, tariffs, joint rates or schedules unjust, unreasonable, insufficient or unjustly discriminatory or otherwise in violation of any of the provisions of this chapter, the commission shall by an order fix reasonable rates, joint rates, tariffs, tolls or schedules to be followed in the future in lieu of those found to be unjust, unreasonable, insufficient or unjustly discriminatory or otherwise in violation of any provisions of law, and the said commission, in fixing the rate of any railroad company, may fix a fair, reasonable and just rate to be charged on any branch line thereof, independent of the rate charged on the main line of such railroad. (1915, c. 8, § 22; Code 1923, c. 15-0, § 22.)

*printed in: West Virginia Code, Volume 9, The Michie Company, § 24-2-3, at 17 (1971 Replacement Volume)

WEST VIRGINIA CODE

§ 24-2-4. Procedure for changing rates.*

No public utility subject to this chapter shall change, suspend or annul any rate, joint rate, charge, rental or classification except after thirty days' notice to the commission and the public, which notice shall plainly state the changes proposed to be made in the schedule then in force and the time when the changed rates or charges shall go into effect. But the commission may enter an order suspending the proposed rate as hereinafter provided. The proposed changes shall be shown by printing new schedules, or shall be plainly indicated upon the schedules in force at the time, and kept open to public inspection: Provided, however, that the commission may, in its discretion, and for good cause shown, allow changes upon less time than the notice herein specified, or may modify the requirements of this section in respect to publishing, posting and filing of tariffs, either by particular instructions or by general order.

Whenever there shall be filed with the commission any schedule stating a change in the rates or charges, or joint rates or charges, or stating a new individual or joint rate or charge or joint classification or any new individual or joint regulation or practice affecting any rate or charge, the commission shall have authority, either upon complaint or upon its own initiative without complaint, to enter upon a hearing concerning the propriety of such rate, charge, classification, regulation or practice; and, if the commission so orders, it may proceed without answer or other form of pleading by the interested parties, but upon reasonable notice, and, pending

*printed in: West Virginia Code, Volume 9, The Michie Company, § 24-2-4, at 18 (1971 Replacement Volume)

such hearing and the decision thereon, the commission, upon filing with such schedule and delivering to the public utility affected thereby a statement in writing of its reasons for such suspension, may suspend the operation of such schedule and defer the use of such rate, charge, classification, regulation or practice, but not for a longer period than one hundred and twenty days beyond the time when such rate, charge, classification, regulation or practice would otherwise go into effect; and after full hearing, whether completed before or after the rate, charge, classification, regulation or practice goes into effect, the commission may make such order in reference to such rate, charge, classification, regulation or practice as would be proper in a proceeding initiated after the rate, charge, classification, regulation or practice had become effective: Provided, that if any such hearing and decision thereon cannot be concluded within the period of suspension, as above stated, such rate, charge, classification, regulation or practice shall go into effect at the end of such period. In such case the commission may require such public utility to enter into a bond in an amount deemed by the commission to be reasonable and conditioned for the refund to the persons or parties entitled thereto of the amount of the excess, plus interest at the rate of six percent per annum, if such rates so put into effect are subsequently determined to be higher than those finally fixed for such utility. No such accrued interest paid shall be deemed part of the cost of doing business in a subsequent application for changing rates or any decision thereon. At any hearing involving a rate sought to be increased or involving the change of any fare, charge, classification, regulation or practice, the burden of proof to show that the increased rate or proposed increased rate, or the proposed change of fare, charge, classification, regulation or practice is just and reasonable shall be upon

the public utility making application for such change. When in any case pending before the commission all evidence shall have been taken, and the hearing completed, the commission shall, within three months, render a decision in such case.

Where more than twenty members of the public are affected by a proposed change in rates, it shall be a sufficient notice to the public within the meaning of this section if such notice is published as a Class II legal advertisement in compliance with the provisions of article three [§ 59-3-1 et seq.], chapter fifty-nine of this Code, and the publication area for such publication shall be the community where the majority of the resident members of the public affected by such change reside or, in case of non-residents, have their principal place of business within this State. (1913, c. 9, § 9; 1915, c. 8; § 9; 1921, c. 150, § 9; Code 1923, c. 15-0, § 9; 1953, c. 152; 1967, c. 105.)

WEST VIRGINIA CODE

§ 24-5-1. Review of final orders of commission.*

Any party feeling aggrieved by the entry of a final order by the commission, affecting him or it, may present a petition in writing to the supreme court of appeals, or to a judge thereof in vacation, within thirty days after the entry of such order, praying for the suspension of such final order. The applicant shall deliver a copy of such petition to the secretary of the commission before presenting the same to the court or the judge. The court or judge shall fix a time for the hearing on the application, but such hearing, unless by agreement of the parties, shall not be held sooner than five days after its presentation; and notice of the time and place of such hearing shall be forthwith delivered to the secretary of the commission, so that the commission may be represented at such hearing by one or more of its members or by counsel. If the court or the judge after such hearing be of the opinion that a suspending order should issue, the court or the judge may require bond, upon such conditions and in such penalty, and impose such terms and conditions upon the petitioner, as are just and reasonable. For such hearing the commission shall file with the clerk of said court all papers, documents, evidence and records or certified copies thereof as were before the commission at the hearing or investigation resulting in the entry of the order from which the petitioner appeals. The commission shall file with the court before the day fixed for the final hearing a written statement of its reasons for the entry of such order, and after arguments by counsel the court shall decide the matter in controversy as may seem to be just and right. (1913, c. 9, § 16; Code 1923, c. 15-0, § 16.)

*printed in: West Virginia Code, Volume 9, The Michie Company, § 24-5-1, at 43 (1971 Replacement Volume)

**Rules of Practice and Procedure, Public Service
Commission of West Virginia,**

RULE 19—Further Hearing, Reopening, or Rehearing.*

(a) Applications for (1) further hearing in a proceeding after the closing of testimony and before final submission on oral argument or brief, for (2) reopening a proceeding after final submission and before decision, or for (3) rehearing or reargument after decision, must be made by petition, duly verified, within ten (10) days after the date of such closing of testimony, final submission or decision, as the case may be. Such petition shall state specifically the grounds relied upon, and shall be filed with the Commission and a copy served by the petitioner upon each adverse party, or his attorney, who appeared at the hearing, or oral argument, if any, or on brief.

(b) If the application be for further hearing before final submission, or for reopening the proceeding to take further evidence after submission and before decision, the nature and purpose of the evidence to be adduced must be briefly stated, and it must appear not to be merely cumulative.

(c) If the application be for rehearing or reargument after decision, the matters claimed to have been erroneously decided must be specified and the alleged errors stated. If thereby any order of the Commission is sought to be vacated, reversed, or modified, by reason of matters which have arisen since the hearing, or by reason of consequences which would result from compliance therewith, or by reason of facts not in possession of the petitioner at the time of the hearing, the

*printed in: Public Service Commission of West Virginia, Rules of Practice and Procedure, at 22 (1969)

matter so relied upon by the petitioner must be fully set forth in the petition.

(d) Application for modification of orders which seek only change in the date when they shall take effect, or in the period of notice thereby prescribed, must be made by petition seasonably filed and served in like manner as other applications under this rule, except that, in case of unforeseen emergency satisfactorily shown by the applicant, such relief may be sought informally, by telegram or otherwise, upon notice thereof to all parties or attorneys who appeared as aforesaid.

(e) Each petition filed under this rule shall be accompanied by three (3) additional copies thereof for the use of the Commission, and by certificate showing service upon the parties or their attorneys who appeared as aforesaid. Within five (5) days after such service any adverse party may file and serve in like manner a reply to the petition, the reply so filed to be accompanied by a like number of copies for the use of the Commission.

(f) Upon the filing of said reply or upon default thereof within the said period, the Commission will make such order with respect to the hearing of said petition, or the granting of the prayer thereof, as it shall deem just and right.

Rules of Practice in the Supreme Court of Appeals of West Virginia

RULE XIII—Rehearing*

1. How obtained.

All petitions for rehearing must be filed in the clerk's office not later than thirty days from the date of the decision complained of. The petition and the brief in support thereof shall be printed, and fifteen copies thereof filed in the office of the clerk.

2. Argument.

No oral arguments will be permitted upon an application for a rehearing. When a rehearing is allowed, the court may fix the time for reargument and resubmission, notice of which shall be given by the clerk to the attorneys of record, but in case the court fails to fix such time the clerk shall enter the case upon the docket as if it had never been heard.

3. Typewritten petition and brief.

In cases in which the record and briefs were not printed, it shall not be necessary to print a petition for rehearing; but five typewritten copies of such petition and brief in support thereof shall be filed in the clerk's office within the time provided by this rule.

*printed in: West Virginia Code, Volume 1, The Michie Company, Appendix at 445 (1973 Replacement Volume)